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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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NATIONAL LABOR RELATIONS BOARD,  
Petitioner,  
vs.

C. W. HUME COMPANY and CALIFORNIA  
PROCESSORS & GROWERS, INC.  
Respondents.

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMER-  
ICA, A.F.L., and CALIFORNIA STATE  
COUNCIL OF CANNERY UNIONS, A.F.L.,  
Intervenors.

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Transcript of Record

In Two Volumes

VOLUME I

Pages 1 to 336

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Upon Petition for Enforcement of an Order of the  
National Labor Relations Board



No. 11693

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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NATIONAL LABOR RELATIONS BOARD,  
Petitioner,  
vs.

C. W. HUME COMPANY and CALIFORNIA  
PROCESSORS & GROWERS, INC.  
Respondents.

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMER-  
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Upon Petition for Enforcement of an Order of the  
National Labor Relations Board

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the United States Circuit Court of Appeals  
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,  
Petitioner,

vs.

G. W. HUME and CALIFORNIA PROCESSORS  
& GROWERS, INC.

Respondent.

### CERTIFICATE OF THE NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board, by its Acting Chief of the Order Section, duly authorized by Section 203.67, Rules and Regulations of the National Labor Relations Board, Series 4, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding had before said Board entitled, "In the Matter of G. W. Hume Company and California Processors & Growers, Inc. and Food, Tobacco, Agricultural & Allied Workers Union of America, C.I.O. and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. of L., and California State Council of Cannery Unions, A. F. of L., Parties to the Contract," the same being known as Case No. 20-C-1391 before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Copy of order designating Howard Myers Trial Examiner for the National Labor Relations Board, dated April 10, 1946.

(2) Stenographic transcript of testimony held before Trial Examiner Myers on April 10 and 11, 1946, together with all exhibits introduced in evidence.

(3) Copy of fifth amended charge filed by the union April 22, 1946.

(4) Copy of Board Attorney's motion to reopen the record, dated April 24, 1946.

(5) Copy of Trial Examiner Ringer's order to show cause, dated April 26, 1946.

(6) Copy of company's telegram, dated May 1, 1946, objecting to the motion to reopen the record.

(7) Copy of union's telegram, dated May 4, 1946, objecting to the motion to reopen the record.

(8) Copy of order denying motion to reopen the record, dated May 6, 1946.

(9) Copy of Trial Examiner Myers' Intermediate Report, dated May 20, 1946, annexed to item 16 hereof; copy of order transferring case to the Board, dated May 24, 1946, together with copy of affidavit of service thereof.

(10) Copy of company's telegram, dated June 5, 1946, requesting extension of time to file exceptions.

(11) Copy of Board's telegrams, dated June 7, 1946, granting all parties extension of time to file exceptions and briefs.

(12) Copy of A. F. of L's exceptions to the Intermediate Report.

(13) Copy of A. F. of L's letter, dated July 8, 1946, requesting oral arguments before the Board.

(14) Copy of notices of hearing for the purpose of oral argument, dated September 17, 1946.

(15) Copy of list of appearances at oral argument held before the Board on October 1, 1946.

(16) Copy of decision and order issued by the National Labor Relations Board on October 31, 1946, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Acting Chief of the Order Section of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set her hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 18th day of July 1947.

[Seal]      /s/ CLARA M. MARTIN,  
Acting Chief, Order Section

## BOARD'S EXHIBIT NO. 1(a)

United States of America, Before the National  
Labor Relations Board, Twentieth Region

Case No. 20-C-1391

In the Matter of—

G. W. HUME and CALIFORNIA PROCESSORS  
& GROWERS, INC.

and

FOOD, TOBACCO, AGRICULTURAL AND  
ALLIED WORKERS UNION OF  
AMERICA, C.I.O.

## FOURTH AMENDED CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that G. W. Hume Company and California Processors & Growers, Inc., at Turlock, California, employing 50 workers in fruit and vegetable canning has engaged in and is engaging in unfair labor practices within the meaning of Section 8 subsections (1) and (3) of said Act, in that on or about November 21, 1945 said company, by its officers, agents and employees, discharged the persons named in the list attached hereto marked "Exhibit A" and ever since has refused to reinstate them solely because of their membership in and activities in behalf of FTA-CIO.

On or about March 25, 1946 said Company granted exclusive recognition to, and renewed or executed a closed-shop collective bargaining agreement with a local of the Teamsters Union (A. F. of L.). At that time FTA-CIO represented a majority of the workers at the plant and there was a question of representation pending and unresolved before the National Labor Relations Board, of which the Company had notice and in which it had participated through its agents.

Since said date, the Company has given effect to the closed-shop provisions of said contract and has required membership in the said Teamsters' Local as a condition of employment.

By the acts set forth above and by granting access to its plant to representatives of said Teamsters' Local, by other acts of preference and assistance and by other acts and statements, said Company by its officers, agents and employees has interfered with, restrained and coerced its employees in the exercise of their rights guaranteed in Section 7 of the said Act, in violation of Section 8, subdivision (1) of said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the full name, local number and affili-

ation of organization, and name and official position of the person acting for the organization.)

FOOD, TOBACCO, AGRICULTURAL &  
ALLIED WORKERS UNION OF  
AMERICA, C.I.O.

150 Golden Gate Ave., San Francisco, Cal.  
Telephone: ORdway 9253

/s/ LUISA MORENO.

Subscribed and sworn to before me this 26th day  
of March, 1946 at San Francisco, California.

/s/ JOHN PAUL JENNINGS,  
Regional Attorney, NLRB.

“Exhibit A”

A. E. Berry	Abe Thiessen
Ernest G. Bishop	Neal Watts
Vider Bjorklund	R. B. White
Jasper J. Bobb	Clemie Robinson
Harold Dillard	Monroe Robinson
Wm. J. Ely	Thomas L. Broll
Clyde Faddis	Clarence McVay
H. F. Frazier	Ruth Waite
Harlie Frischneckt	Agnes Hopkins
Irwin C. Heagle	Myrtle Brown
Oscar Johnson	Genevieve Alsup
T. Boyd McKamey	Marguerite Watts
Archie Miller	Clifford C. Luther
A. E. Moore	R. E. Rearick
Harry E. Pierson	John M. Smith

[Endorsed]: Filed March 26, 1946.



## BOARD'S EXHIBIT NO. 1(b)

[Title of Board and Cause.]

## COMPLAINT

It having been charged by the Food, Tobacco, Agricultural & Allied Workers Union of America, C.I.O., that G. W. Hume Company, Turlock, California, and California Processors & Growers, Inc., hereinafter called respondent cannery and respondent association, respectively, have engaged in, and are now engaging in, certain unfair labor practices affecting commerce, as set forth and defined in the National Labor Relations Act, 49 Stat. 449, herein called the Act, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twentieth Region as agent for the Board, designated by the Board's Rules and Regulations, Series 3, as amended, Article IV, Section 1, hereby issues its Complaint and alleges as follows:

## I.

The respondent cannery is a California corporation operating a plant at Turlock, California, herein called the Turlock plant, where it is engaged in the canning and processing of fruits and vegetables. Respondent cannery in the course and conduct of its business, causes, at all times herein alleged continuously has caused in excess of 62 percent of the products of its Turlock, California plant valued at in excess of \$1,900,000 annually, to be sold and transported in interstate and foreign commerce

from its Turlock plant to states and territories of the United States other than the State of California and to foreign countries.

## II.

Respondent association is, and at all times since December 18, 1936, has been, a corporation organized under and existing by virtue of the laws of the state of California, having its principal office and place of business in the City and County of San Francisco, State of California. Respondent association is a non-profit corporation formed for the following purposes:

(a) The promotion of friendly relations and co-operation between the members of respondent association and their employees; the recognition of the principle that every person who wishes to work has the right to work; the recognition and protection of the right of every person to seek, secure and retain work for which he is fitted; the recognition and protection of the right of the members of respondent association to choose their employees; the encouragement of industry, efficiency and safety between employer and employee alike; the recognition and protection of the right of employees of members of respondent association to be free from coercion, duress or intimidation from any source;

(b) The ascertainment of facts pertaining to fair and reasonable wages, hours and other working conditions among the members of respondent association and their competitors in this and other parts of the United States;

(c) The dissemination of the information so obtained:

(d) The representation, when requested, of members of respondent association in their respective labor relations with their employees, and with any governmental regulatory, advisory or arbitration commission, board of body, which may have jurisdiction thereof, and of controversies arising therefrom;

(e) The use of any and all lawful means to attain the enforcement of all agreements entered into between the members of respondent association and their respective employees; the prevention of any breach of any such agreements, either by employer or employee, and the giving of assistance to the injured party in the event of any such breach; and

(f) In general to advise and confer with the members in matters pertaining to their employer-employee relations.

Respondent association is, and continuously at all times hereinafter mentioned has been, engaged in promoting and furthering the aforesaid purposes in the interests of the employers, including respondent cannery, which are members of respondent association.

Members of respondent association are a large number, to-wit, sixty-one, of the cannery operators engaged in the California canning industry, constituting nearly all the cannery operators engaged in said industry in Northern and Central California.

## III.

Respondent association, by virtue of the facts alleged in paragraph II hereof, is an employer within the meaning of Section 2, subdivisions (1) and (2) of the National Labor Relations Act, the activities of which bear the same relation to interstate and foreign commerce as the activities of the employers in the interests of which said respondent association acts.

## IV.

The respondents while engaged in their business as described above, by their officers, agents, and employees have since approximately August 1, 1945, interfered with, restrained, and coerced their employees at the Turlock plant in the exercise of their rights guaranteed in Section 7 of the Act by various acts and statements including without limitation the following:

(a) The respondents have urged, persuaded, and warned their employees not to become or remain members of F.T.A.-C.I.O., and have demanded that they become and remain members of the A. F. of L., that they pay dues, fees, and assessments to the A. F. of L., and have threatened said employees with discharge if they should refuse to do so.

(b) The respondents have granted to representatives of the A. F. of L. access to the Turlock plant and have otherwise assisted the A. F. of L., and have at the same time, refused access to said plant to representatives of the F.T.A.-C.I.O.

(c) Respondents have required said employees at the Turlock plant to obtain clearance cards from the A. F. of L., and to sign an agreement for the checkoff of their dues in the A. F. of L., as a condition of employment, and have refused to employ or continue in its employ, persons who failed or refused to obtain such clearance and to sign such check-off authorizations.

## V.

Respondents by their officers, agents, and employees on or about November 21, 1945, discharged the employees listed in Exhibit "A"; on or about November 26, 1945, discharged Harlie Frischneckt, and on or about December 7, 1945, discharged Clarence McVay.

## VI.

Respondents by their officers, agents, and employees ever since the dates alleged in paragraph V have refused and still refuse to reinstate any of the employees referred to in said paragraph, except that respondents reemployed some of said employees on or about February 7, 1946.

## VII.

Respondents discharged and refused, and still refuse, to reinstate said employees named above, because of their membership in and activities on behalf of F.T.A.-C.I.O., and because of their refusal to become or remain members of the A. F. of L., to pay dues and assessments to the A. F. of L., and to sign an authorization for a checkoff of their A. F. of L. dues.

## VIII.

Following a hearing conducted in the Matter of Bercut Richards Packing Company, et al., Cases Nos. 20-R-1414, et al, the Board, on October 5, 1945, directed that a collective bargaining election be held among the employees of the members of the respondent association, including employees of the respondent cannery.

Pursuant to said Direction of Election, an election was conducted among the employees of the respondent cannery on or about October 17, 1945. Thereafter and on or about February 15, 1946, the Board issued its Supplemental Decision and Order in which it directed that the election held should be set aside and that a new election should be conducted.

## IX.

On or about March 25, 1946, while said question of representation was still pending and unresolved before the Board, respondent cannery executed an agreement with the A. F. of L., recognizing the A. F. of L. as the exclusive representative of its employees at its Turlock plant for the purposes of collective bargaining with the respondent cannery and requiring as a condition of employment, membership in the A. F. of L. The respondent cannery since said date has enforced and given effect to said contract. At the time said contract was executed, the respondents knew that the question of representation of their employees was still pending and unresolved before the Board, and the respondents knew fur-



ther that the Board in its said Supplemental Decision of February 15, 1946, had expressly provided that while the question of representation was unresolved, and pending a new election, the respondents could not grant exclusive recognition either to the F.T.A.-C.I.O. or to the A.F. of L.

### X.

By reason of the matters alleged in paragraphs IV through IX, above, the said collective bargaining agreement referred to in paragraph IX is illegal and void.

### XI.

By all of the acts of respondents as set forth and described in paragraphs IV through IX, above, and by each of said acts, respondents interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act, and by all of said acts and by each of them respondents have engaged in, and are now engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of said Act.

### XII.

By all of the acts of the respondents as set forth and described in paragraphs V through IX, by negotiating the contract referred to in paragraph IX, by granting exclusive recognition to the A. F. of L., and by administering and enforcing said contract, respondents discriminated, and are now discriminating in regard to hire or tenure of employment against their employees and thus discouraged, and

are now discouraging membership in the F.T.A.-C.I.O., and thus encouraged and are now encouraging membership in the A. F. of L., and thereby engaged in, and are thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of the Act.

### XIII.

The activities of the respondents as set forth, and described in paragraphs IV through XII, above, occurring in connection with the operations of respondents as described in paragraphs I, II, and III, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and territories of the United States and with foreign countries and have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

### XIV.

The aforesaid acts of respondent, as set forth in paragraphs IV through XII, above, constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3) and Section 2, subdivisions (6) and (7) of the Act.

Wherefore, the National Labor Relations Board on the 27th day of March, 1946, issues its Complaint against G. W. Hume Company and California Processors & Growers, Inc., respondents herein.

[Seal]      /s/ JOSEPH E. WATSON,

Regional Director, National Labor Relations Board,  
Twentieth Region.

Appendix A

A. E. Berry	Abe Thiessen
Ernest G. Bishop	Neal Watts
Vider Bjorklund	R. B. White
Jasper J. Bobb	Clemie Robinson
Harold Dillard	Monroe Robinson
Wm. J. Ely	Thomas L. Broll
Clyde Faddis	Ruth Waite
H. F. Frazier	Agnes Hopkins
Irwin C. Heagle	Myrtle Brown
Oscar Johnson	Genevieve Alsup
T. Boyd McKamey	Marguerite Watts
Archie Miller	Clifford C. Luther
A. E. Moore	R. E. Rearick
Harry E. Pierson	John M. Smith

## BOARD'S EXHIBIT No. 1(c)

[Title of Board and Cause.]

## NOTICE OF HEARING

Please Take Notice that on the 10th day of April, 1946, at 10 o'clock in the forenoon in Room 305, Old Courthouse Building, Modesto, California, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the Complaint attached hereto, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

A copy of the Charge upon which the Complaint is based is attached hereto.

You are further notified that you have the right to file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an answer to the said Complaint within ten (10) days from the service thereof.

Please Take Notice that duplicates of all exhibits which are offered in evidence will be required unless, pursuant to request or motion, the Trial Examiner in the exercise of his discretion and for good cause shown, directs that a given exhibit need not be duplicated.

In Witness Whereof the National Labor Relations Board has caused this, its Complaint and Notice of

Hearing, to be signed by the Regional Director for the Twentieth Region on this 27th day of March, 1946.

[Seal]      /s/ JOSEPH E. WATSON,  
Regional Director, National  
Labor Relations Board.

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BOARD'S EXHIBIT No. 1(d)

[Title of Board and Cause.]

AFFIDAVIT OF SERVICE OF NOTICE OF  
HEARING AND COMPLAINT

Date of Mailing    3/27/46.

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled documents by postpaid registered mail upon the following persons, addressed to them at the following addresses:

California Processors & Growers, Inc.  
Financial Center Building, Oakland, California.  
Registry No. 915548. Date of Delivery: 3-28-46.

G. W. Hume Company, Turlock, California.  
Registry No. 915549. Date of delivery: 3-28-46.

Food, Tobacco, Agricultural & Allied Workers  
Union of America, C.I.O., 150 Golden Gate  
Avenue, San Francisco, California.  
Registry No. 91550. Date of delivery: 3-28-46.

International Brotherhood of Teamsters,  
Chauffeurs, Warehousemen and Helpers of  
America, A. F. of L.,  
c/o Mr. Mathew O. Tobriner, 1035 Russ Building,  
San Francisco 4, California.  
Registry No. 915551. Date of delivery: 3-28-46.

International Brotherhood of Teamsters,  
Chauffeurs, Warehousemen & Helpers of  
America, A. F. of L.  
846 South Union, Los Angeles, California.  
Att'n.: Mr. Einar Mohn. Registry No. 915552.  
Date del.: 3-29-46.

California State Council of Cannery Unions,  
A. F. of L.,  
1916 Boadway, Oakland 12, California.  
Registry No. 915553. Date of delivery: 3-28-46.

/s/ BERNICE E. OLSON.

Subscribed and sworn to before me this 1st day  
of April, 1946.

[Seal] /s/ ELLA P. ELLIOTT,  
Designated Agent, National Labor Relations Board,  
20th Region.

BOARD'S EXHIBIT No. 1(e)

[Title of Board and Cause.]

ANSWER OF G. W. HUME COMPANY AND  
CALIFORNIA PROCESSORS AND GROW-  
ERS, INC.

Come now the above named G. W. Hume Company and California Processors and Growers, Inc., each for itself, and answering the complaint on file in the above entitled matter, admit, allege and deny as follows:

I.

Admit the allegations contained in paragraphs numbered I and II of said complaint, but in connection with the final paragraph of the allegations contained under II allege that the members of the California Processors and Growers, Inc., do not constitute "nearly all the cannery operators engaged in said industry in Northern and Central California," but do constitute a group of canners processing approximately seventy-five percent of the canned fruit and vegetables pack of the State of California.

II.

Deny that respondents, or either of them, in any manner or form, have interfered with, restrained, or coerced their employees at the Turlock plant in the exercise of their rights guaranteed in Section 7 of the Act by various acts and statements, or in any manner whatsoever, including the acts or statements set forth in sub paragraphs a, b and c of paragraph IV of said complaint. In this connection respondents allege that any or all acts or statements made

or done by respondents, or either of them, have been and are in accordance with the provisions of a bona fide collective bargaining agreement, and pursuant to the provisions of the National Labor Relations Act.

### III.

Deny each and every, all and singular, the allegations set forth in paragraph VI of said complaint, with the exception of that portion of said paragraph alleging that "respondents reemployed some of said employees on or about February 7, 1946."

### IV.

Deny each and every, all and singular, the allegations contained in paragraph VII of said complaint, but in this connection allege that all of the acts and statements of respondents in connection with the discharge or reinstatement of any employees have been and are in accordance with the provisions of a bona fide collective bargaining agreement, and pursuant to the National Labor Relations Act.

### V.

Deny that, as alleged in paragraph IX of said complaint, there was or is pending and unresolved before the Board any question of representation which would preclude respondents from dealing collectively with employees within the Turlock plant, or within the unit for members of C. P. & G. plants, as prescribed by the Board, and deny that respondents, or either of them, knew that the Board in its supplemental decision of February 15, 1946, had



expressly provided that while the question of representation was unresolved, and pending a new election, the respondents could not grant exclusive recognition either to the FTA-CIO or to the A. F. of L., and in this connection respondents allege that the Board was without authority to make any such express provisions, and that the Board, since February 15, 1946, through its Chairman, has declared that the provisions of its supplemental decision of February 15, 1946, "could not and did not order the employers to take or refrain from taking any particular action in this representation case in the same sense that it would have had the power to do in an unfair labor practice proceeding."

## VI.

Deny the conclusion set forth in paragraph X of said complaint.

## VII.

Deny each and every, all and singular, the allegations and conclusions set forth in paragraphs XI, XII, XIII and XIV of said complaint.

Wherefore, respondents, and each of them, pray that the complaint herein be dismissed, and that all proceedings pursuant thereto be terminated.

G. W. HUME COMPANY and  
CALIFORNIA PROCESSORS  
AND GROWERS, INC.

By /s/ PAUL ST. SURE and  
JAMES R. AGEE,  
Their Attorneys.

Dated: April 9, 1946.

## BOARD'S EXHIBIT No. 1(f)

[Title of Board and Cause.]

## ANSWER

Now come International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A.F.L., and California State Council of Cannery Unions, A.F.L., hereinafter referred to as A.F.L., and by way of Answer to the Complaint on file herein, allege as follows:

## I.

Answering paragraphs I, II, III and VIII of said Complaint, admit the allegations thereof.

## II.

Answering paragraphs IV, V, VI and VII of said Complaint, alleges it is unable to answer said allegations in that they are ambiguous, uncertain and unintelligible. It cannot be ascertained therefrom whether or not the Complaint refers to acts rendered in the execution of a collective bargaining agreement which was upheld as valid in the Decision, Direction of Elections and Order of the National Labor Relations Board in the matter of Ber-cut-Richards Packing Company et al. and Cannery and Food Process Workers Council of the Pacific Coast and its Affiliated Unions et al., being cases number 20-R-1414 et al., or whether said allegations refer to acts not committed in pursuance of said contract. It cannot be ascertained therefrom what acts the Complaint refers to or what acts of respond-

ent are intended when it is alleged that "respondent urged, persuaded and warned its employees not to become or remain members of the F.T.A.-C.I.O.," or what acts or conduct is referred to in the allegation that respondent urged that they (the workers) become and remain members of the A.F.L. and pay dues and assessments to it, threatening them with discharge if they failed to do so. It cannot be ascertained when, if ever, said alleged acts occurred. It cannot be ascertained what acts are referred to and when they are alleged to have occurred in the allegation that respondent granted access to its plant to representatives of the A.F.L. and otherwise assisted A.F.L. It cannot be ascertained from paragraphs V, VI, and VII or any of said paragraphs whether or not the alleged discharges and refusals to reinstate were acts rendered in execution of said aforementioned collective bargaining agreement or whether said allegations refer to acts not committed in pursuance of said contract. All of said ambiguities make it impossible for A.F.L. to answer said allegations.

### III.

Answering paragraph IX of said Complaint, A.F.L. denies that the Board, in its Supplemental Decision of February 15, 1946, had expressly provided that, while the question of representation was unresolved and pending a new election, respondent should not grant exclusive recognition either to F.T.A.-C.I.O. or the A.F.L., but alleges that the Order in said case did no more than set aside and

annul the election, and made no ruling whatsoever with respect to said exclusive recognition.

Answering the remaining allegations of said paragraph IX, admits that an agreement was executed with A.F.L., but denies the characterization of it in said paragraph. A.F.L. has no information or belief with regard to the matter of whether the respondent knew that a question of representation was pending and on that ground denies that at the time said contract was executed respondent knew that the question of representation of its employees was still pending and unresolved before the Board.

#### IV.

Answering paragraphs X, XI, XII, XIII and XIV of said Complaint, denies each and every obligation of each and every of said paragraphs.

As a Further, Separate and Distinct Answer Herein, the A.F.L. alleges that it is and has been for many years the duly constituted and exclusive bargaining representative of respondent's employees; that the election previously ordered herein was abortive and illegal and was later set aside by the National Labor Relations Board and therefore did not indicate or result in the selection by respondent's employees of a new or different bargaining representative. That no valid election has yet been held or conducted among said employees, and that until such an election is ordered and held and until a new and different bargaining representative is selected and certified, the A.F.L. is the exclusive bar-

gaining representative of respondent's employees, and respondent is obligated to bargain with the A.F.L. as such exclusive representative.

Wherefore, A.F.L. prays that the Complaint be dismissed.

TOBRINER & LAZARUS,

By /s/ MATHEW O. TOBRINER,  
Attorneys for A.F.L.

State of California,  
City and County of San Francisco—ss.

Mathew O. Tobriner, being first duly sworn, deposes and says:

That he is the attorney for A.F.L. and makes this verification in its behalf for the reason that none of the officers and said A.F.L. are in the City and County of San Francisco wherein said attorney maintains his offices; that he has read the foregoing Answer and knows the contents thereof; that the same is true of his own knowledge except as to those matters which are therein stated on information and belief, and as to those matters that he believes it to be true.

/s/ MATHEW O. TOBRINER.

Subscribed and sworn to before me this 6th day of April, 1946.

[Seal] /s/ LOUIS WIENER,

Notary Public in and for the City and County of San Francisco, State of California.

## BOARD'S EXHIBIT No. 1(g)

[Title of Board and Cause.]

## MOTION TO DISMISS

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. of L., and California State Council of Cannery Unions, A. F. of L., hereinafter referred to as AFL, joined herein as "parties to the contract," hereby appear specially herein for the purpose of this motion and not otherwise, and hereby make and file this motion to dismiss upon the following grounds:

## I.

The complaint herein on file, in paragraph IX, page 7, alleges:

"At the time said contract was executed, the respondents knew that the question of representation of their employees was still pending and unresolved before the Board, and the respondents knew further that the Board in its said Supplemental Decision of February 15, 1946, had expressly provided that while the question of representation was unresolved, and pending a new election, the respondents could not grant exclusive recognition either to the F.T.A.-C.I.O. or to the A. F. of L."

In the event that said complaint is correct and said Supplemental Decision of February 15th constitutes an order of the Board, the Board had an appro-

appropriate remedy other than the filing of this complaint. For the purposes of this specific ground for dismissal of said complaint, it is assumed that said provision constituted an order, although in other and separate grounds for said dismissal we contend that said provision was not an order. In the event that said provision were an order and were legal and enforceable, the United States Circuit Court of Appeals for the Ninth Circuit is the proper tribunal in which the Board should seek enforcement of said order. The Trial Examiner of the Board is not the proper officer or tribunal before whom the issues presented by the complaint herein may be tried and neither said Trial Examiner nor the National Labor Relations Board has any jurisdiction in the premises.

As and for a second and separate and independent ground for said motion to dismiss, said AFL alleges:

### I.

The National Labor Relations Board, on or about February 15, 1946, having already "provided" that the respondent company is without right to bargain and contract with the AFL, has by such pronouncement prejudged the present case before trial and is therefore not the proper tribunal before which the matters presented by the complaint herein should be tried. Such "ruling" was made without any prior notice to the parties that the Board would make any determination of the right of the parties to engage in exclusive collective bargaining.

No hearing was held upon said subject matter. No evidence was taken on such subject matter. No charges were filed or complaint issued on such subject matter. The Board attempted to determine such right ex cathedra and ex parte, in violation of the provisions of the National Labor Relations Act. By said unlawful acts the Board has prejudged the instant matter, rendered itself unable to decide said matter impartially and this complaint should therefore be dismissed.

As and for a third and separate and independent ground for said motion to dismiss, said AFL alleges:

I.

In the event that the Supplemental Decision of February 15, 1946, did not "order" said AFL not to bargain exclusively with respondent or in the event that the National Labor Relations Board lacked jurisdiction to provide in said Supplemental Decision that said AFL should not bargain exclusively with said company, the within complaint should be dismissed on the ground that it does not state a cause of action. Unless and until a new bargaining agency is chosen, respondent company is not only permitted but obligated to bargain with and recognize the AFL as the existing bargaining representative of its employees.

Wherefore, AFL moves that the within complaint be dismissed.

TOBRINER & LAZARUS,  
By /s/ MATHEW O. TOBRINER,  
Attorneys for AFL.



Memorandum of Points and Authorities  
in Support of Motion to Dismiss

National Labor Relations Act, Section 10,  
subparagraph (e);

National Labor Relations Board v. Botany  
Worsted Mills, 133 Fed. (2d) 876, 6 Labor  
Cases p. 64, 161;

National Labor Relations Board v. Appala-  
chian Electric Power Co., 140 Fed. (2d)  
217, 7 Labor Cases p. 65, 670;

National Labor Relations Board v. Whittier  
Mills Co., 111 Fed. (2d) 474, 2 Labor Cases  
631.

United States of America  
Before the National Labor Relations Board  
Case No. 20-C-1391

In the Matter of

G. W. HUME COMPANY and CALIFORNIA  
PROCESSORS & GROWERS, INC.,

and

FOOD, TOBACCO, AGRICULTURAL & ALLIED  
WORKERS UNION OF AMERICA, C.I.O.,

and

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMER-  
ICA, A. F. OF L., and CALIFORNIA STATE  
COUNCIL OF CANNERY UNIONS, A. F.  
OF L.,

Parties to the Contract.

AFL'S EXCEPTIONS TO INTERMEDIATE  
REPORT

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. L. of L., and California State Council of Cannery Unions, A. F. of L., hereinafter referred to as "AFL," hereby except to the following findings of the Trial Examiner in the above-entitled case, namely:

“The representation proceeding concerning Hume’s employees together with those of the other members of the Association, having been set in motion, it remains a bar to new collective bargaining contracts containing exclusive recognition between Hume and any labor organization until the entire proceeding has run its course. It was therefore Hume’s obligation under the Act to refuse to deal with any labor organization as the exclusive representative of its employees. The fact that Hume believed AFL to be the majority representative of the employees at the time of the execution of the March 25, 1946, contract is not sufficient. The question of the majority representation was before the Board and it was the Board’s and not Hume’s function to resolve that question. By taking upon itself to determine the question of representation, Hume committed an unfair labor practice by lending prestige to AFL through the process of contracting with it while the employees were making their selection.”

(Intermediate Report, p. 24.)

“By entering into the closed-shop contract of March 25, 1946, Hume created a condition of discrimination in regard to the hire and tenure and terms or conditions of employment of its employees, which had the coercive effect of encouraging membership in Local 22382 and discouraging membership in CIO. It is therefore found that the foregoing conduct of Hume was, in fact, a discrimination in regard to the hire and tenure and terms or

conditions of employment of its employees because it compelled its employees to become and remain members of Local 22382, and, therefore interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.”

(Intermediate Report, p. 26.)

“It is also apparent that the March 25 contract sets up the employees of Hume as a separate appropriate bargaining unit despite the fact that the Board had already found that the employees of the members of the Association constituted the appropriate bargaining unit. In this respect too, the March 25 agreement must fall since it fails to comply with the requirements of the proviso in Section 8(3) of the Act. At the time of the hearing Hume was still a member of the Association.”

(Intermediate Report, p. 26.)

Respectfully submitted,

TOBRINER & LAZARUS,

By /s/ MATHEW O. BRINER,  
Attorneys for AFL.

United States of America  
Before the National Labor Relations Board

Case No. 20-C-1391

In the Matter of

G. W. HUME COMPANY and CALIFORNIA  
PROCESSORS & GROWERS, INC.,  
and

FOOD, TOBACCO, AGRICULTURAL & ALLIED  
WORKERS UNION OF AMERICA, C.I.O.,  
and

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMER-  
ICA, A. F. OF L., and CALIFORNIA STATE  
COUNCIL OF CANNERY UNIONS, A. F.  
OF L.,

Parties to the Contract.

John Paul Jennings, for the Board.

Messrs. Paul St. Sure and James R. Agee, of Oak-  
land, Calif., for the respondent.

Messrs. Gladstein, Anderson, Resner, Sawyer &  
Edises, by Bertram Edises, of Oakland, Calif., for  
the CIO.

Messrs. Tobriner & Lazarus, by Mathew O. To-  
briner, of San Francisco, Calif., for the AFL.

Seymour Cohen, of counsel to the Board.

DECISION AND ORDER

On May 20, 1946, Trial Examiner Howard Myers  
issued his Intermediate Report in the above-entitled

proceeding, finding that the respondent Hume had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner further recommended that the complaint be dismissed as to the respondent Association, and also that it be dismissed without prejudice insofar as it alleges that John M. Smith was discriminatorily discharged. Thereafter the AFL filed exceptions to the Intermediate Report and a supporting brief. On October 1, 1946, the Board at Washington, D. C., heard oral argument in which the respondent Hume, the AFL, and the CIO participated.

The Board has reviewed the rulings of the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the modifications and additions hereinafter set forth.

1. The Trial Examiner found that the respondent Hume entered into a closed-shop contract with the AFL on March 25, 1946, after the Board had determined that there existed a question concerning representation of the employees covered by the con-

tract<sup>1</sup> and after the Board had, in vacating the first election held to resolve the question concerning representation, explicitly reserved to itself the determination of that question.<sup>2</sup> We have already considered the propriety of such conduct in a companion case, *Matter of Flotill Products, Inc.*, 70 N.L.R.B., No. 12; and, for the reasons therein stated, we conclude that the respondent Hume, by entering into the contract of March 25, 1946, interfered with, restrained and coerced its employees, within the meaning of Section 8(1) of the Act.<sup>3</sup> While it is not determinative of the issue before us, it is to be noted as added proof of their unlawful conduct that the parties, by executing the new contract, did more than preserve the status quo. The provisions of this contract are more stringent than the corresponding union security provisions theretofore in effect, as set forth in the Intermediate Report.

The Trial Examiner also found, as an additional ground for invalidating the March 1946 contract, that it covered a unit different from the unit pre-

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<sup>1</sup>*Matter of Bercut-Richards Packing Company, et al.*, 64 N.L.R.B. 133.

<sup>2</sup>*Matter of Bercut-Richards Packing Company*, 65 N.L.R.B. 1052, 1057.

<sup>3</sup>In view of the state of the record and in view of our opinion that we shall effectuate the policies of the Act by our remedial order, we find it unnecessary to determine whether the execution of the contract also violated Section 8(3) of the Act.

viously found appropriate by the Board. In view of our conclusion in the preceding paragraph, we find it unnecessary to pass upon this further issue in the present case.

2. The Trial Examiner found that the respondent Hume discriminatorily discharged 29 employees because of their failure to maintain membership in the AFL. This issue is independent of the representation aspects of the case discussed in paragraph 1, above, and its resolution is determined by well-established principles under Section 8(3) of the Act and the proviso thereto.

The pertinent provisions of the contract in force at the time of the discharges are set forth in the Intermediate Report, and we agree with the Trial Examiner's conclusion that nothing in those provisions required the employees in question to maintain their union membership as a condition of continued employment with the respondent.<sup>4</sup> We also agree with the Trial Examiner's conclusion that at the time of the discharges the respondents did not regard the contract as requiring maintenance by employees of union membership, whatever oral understanding may have previously existed between

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<sup>4</sup>See *N.L.R.B. v. Electric Vacuum Cleaner Company, Inc.*, 315 U. S. 685, 692; *N.L.R.B. v. Isthmian Steamship Company*, 126 F. 2d 598, 600 (C.C.A. 2); *N.L.R.B. v. Mason Manufacturing Company*, 126 F. 2d 810, 814 (C.C.A. 9). Cf. *Matter of The Iron Fireman Manufacturing Company*, 69 N.L.R.B., No. 4.



the parties.<sup>5</sup> Moreover, that the parties clearly understood the difference, in terms and effect, between a contract requiring maintenance of membership and one which does not, becomes apparent by comparing the contract in effect at the time of the discharges with the contract subsequently executed by the parties in March 1946. In the latter contract the parties expressly provided that employees who failed to maintain their membership in the Union could be discharged.

3. In Section VI of the Intermediate Report, entitled "The Remedy," the Trial Examiner stated

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<sup>5</sup>In this connection, see Matter of Pittsburg Plate Glass Company, 66 N.L.R.B. 1083, where the contract contained a provision that the Company would cooperate with the Union "to the best interests of all parties." A majority of the Board said: "We do not regard as controlling testimony of management and UMW representatives to the effect that in their opinion the respondent was bound to require membership in the UMW as a condition of employment or that the respondent would accede to such a demand if the UMW insisted on it. The record does not establish that the respondent agreed to bind itself to require membership in the UMW as a condition of employment. \* \* \* the proviso [to Section 8(3)] affords no protection to an arrangement in which an employer may at will discriminate in favor of or against any employee with respect to the requirement of union membership. An employer, however excellent its motives, may not refuse to execute the sort of agreement contemplated by the proviso and later invoke the proviso as a defense to a discharge made under a different agreement." To the same effect, see Matter of The Iron Fireman Manufacturing Company, 69 N.L.R.B., No. 4.

that the respondent would not "be required or permitted," under the recommended order therein, to vary those provisions of the contracts in question which establish "wages, hours of employment, rates of pay," etc. While we agree with the Trial Examiner that our order does not require the respondent to cease and desist from giving effect to these contract provisions, we do not now consider it necessary to pass upon the permissibility of doing so.

### ORDER

Upon the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, G. W. Hume Company, Turlock, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Recognizing Cannery Workers Union, Local 22382, A. F. of L., and California State Council of Cannery Unions, A. F. of L., as the exclusive representative of its employees for the purpose of collective bargaining, unless and until said organization or organizations shall have been certified by the National Labor Relations Board as the exclusive representatives of such employees;

(b) Giving effect to its contract dated March 25, 1946, with California State Council of Cannery Unions, A. F. of L., and Cannery Workers Union, Local 22382, A. F. of L., or to any extension, renewal, modification, or supplement thereof, or to

any superseding contract with those labor organizations or any other labor organization or affiliate thereof, unless and until said organization or organizations shall have been certified by the National Labor Relations Board as the exclusive representatives of its employees;

(c) Discouraging membership in Food, Tobacco, Agricultural and Allied Workers Union of America, C.I.O., or encouraging or discouraging membership in any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of their employment;

(d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Food, Tobacco, Agricultural and Allied Workers Union of America, C.I.O., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Clarence McVay and to the employees whose names appear in Appendix B of the

Intermediate Report, attached hereto, immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges, in the manner set forth in Section VI of the Intermediate Report, entitled "The Remedy";

(b) Make whole the employees whose names appear in Appendices B and C of the Intermediate Report for any loss of pay they may have suffered by reason of the respondent's discrimination against them, in the manner set forth in the aforementioned Remedy Section of the Intermediate Report;

(c) Withdraw and withhold all recognition from California State Council of Cannery Unions, A. F. of L., and Cannery Workers Union, Local 22382, A. F. of L., as the exclusive representative of its employees for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment, unless and until said organization or organizations shall have been certified by the National Labor Relations Board as the representatives of such employees:

(d) Post at its cannery at Turlock, California, copies of the notice attached hereto, marked "Appendix A."<sup>6</sup> Copies of the notice, to be furnished by the Regional Director for the Twentieth Region,

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<sup>6</sup>In the event that this order is enforced by decree of a Circuit Court of Appeals, there shall be inserted in the notice, before the words: "A Decision and Order," the words: "A Decree of the United States Circuit Court of Appeals Enforcing."

shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Twentieth Region, in writing, within ten (10) days from the date of this Order, what steps the respondent Hume has taken to comply herewith.

It Is Further Ordered that the complaint, insofar as it alleges that the respondent California Processors and Growers, Inc., committed unfair labor practices, be, and it hereby is, dismissed.

And It Is Further Ordered that the complaint, insofar as it alleges that the respondent Hume discriminated against John M. Smith within the meaning of Section 8(3) of the Act, be, and it hereby is, dismissed without prejudice.

Signed at Washington, D. C., this 31st day of October, 1946.

[Seal]

NATIONAL LABOR  
RELATIONS BOARD,  
PAUL M. HERZOG,  
Chairman,  
JOHN M. HOUSTON,  
Member.

## APPENDIX A

## Notice to All Employees

Pursuant to a decision and order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Offer to those of the employees named below who have not been reinstated, immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make each of the following whole for any loss of pay suffered as a result of the discrimination.

A. E. Berry	Oscar Johnson
Ernest G. Bishop	T. Boyd McKamey
Vider Bjorklund	Clarence McVay
Jasper J. Bobb	Archie Miller
Harold Dillard	A. E. Moore
Wm. J. Ely	Harry E. Pierson
Clyde Faddis	Abe Thiessen
H. F. Frazier	Neal Watts
Harlie Frischknecht	R. B. White
Irwin C. Heagle	

We Will make whole the following named em-

ployees for any loss of pay suffered as a result of our discrimination against them.

Clemie Robinson	Myrtle Brown
Monroe Robinson	Genevieve Alsup
Thomas L. Broll	Marguerite Watts
Ruth Waite	Clifford C. Luther
Agnes Hopkins	R. E. Rearick

We Will Not recognize the Cannery Workers Union, Local 22382, A. F. of L., and California State Council of Cannery Unions, A. F. of L., as the exclusive representatives of our employees for the purpose of collective bargaining, unless and until said organization or organizations shall have been certified by the National Labor Relations Board as the exclusive representatives of our employees.

We Will Not give effect to our contract dated March 25, 1946, with California State Council of Cannery Unions, A. F. of L., and Cannery Workers Union, Local 22382, A. F. of L., or to any superseding contract with those labor organizations or any other labor organization or affiliate thereof, unless and until said organization or organizations shall have been certified by the National Labor Relations Board as the exclusive representatives of our employees.

We Will Not discourage membership in Food, Tobacco, Agricultural and Allied Workers Union of America, C.I.O., or encourage or discourage membership in any other labor organization of our

employees, by discharging or refusing to reinstate any of our employees, or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of employment.

We Will Not in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Food, Tobacco, Agricultural and Allied Workers Union of America, C.I.O., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act. All our employees are free to become or remain members of Food, Tobacco, Agricultural and Allied Workers Union of America, C.I.O., or any other labor organization. We will not discriminate in regard to the hire or tenure of employment or any term or condition of employment of any employee because of his membership in or activity on behalf of any such labor organization.

G. W. HUME COMPANY

.....  
(Employer)

By .....  
(Representative) (Title)

Dated.....



Note: Any of the above-named employees presently serving in the armed forces of the United States will be offered full reinstatement upon application in accordance with the Selective Service Act after discharge from the armed forces.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

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[Title of Board and Cause.]

## INTERMEDIATE REPORT

### Statement of the Case

Upon a fourth amended charge duly filed on March 26, 1946, by Food, Tobacco, Agricultural & Allied Workers Union of America, affiliated with the Congress of Industrial Organization, herein called CIO, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twentieth Region (San Francisco, California), issued its complaint on March 27, 1946, against G. W. Hume Company, Turlock, California, herein called Hume, and against California Processors & Growers, Inc., herein called the Association, alleging that Hume and the Association, collectively referred to herein as the respondents, had engaged in and are engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and

(3) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and the fourth amended charge, accompanied by notice of hearing thereon, were duly served upon CIO, upon each of the respondents, and upon two affiliates of the American Federation of Labor, namely the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Teamsters, and California State Council of Cannery Unions, herein called the Council, designated in the complaint as parties to the contract and collectively referred to herein as AFL.

With respect to unfair labor practices the complaint alleged in substance that the respondents: (1) since approximately August 1, 1945, interfered with, restrained, and coerced Hume's employees in the exercise of their rights as guaranteed in section 7 of the Act by (a) urging, persuading, and warning the said employees to refrain from becoming or remaining members of CIO, (b) demanding, under threat of dismissal, that the said employees join and remain members of A.F.L. and pay dues, fees, and assessments to A.F.L., (c) granting to A.F.L. representatives access to Hume's plant while denying like privilege to representatives of C.I.O., and (d) requiring the said employees, as a condition of employment, to obtain clearance cards from A.F.L. and to execute agreements for the check-off of A.F.L. dues; (2) discharged on or about November 21, 1945, 28 named Hume employees<sup>1</sup> and discharged

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<sup>1</sup>The names of these persons are listed on Appendix "A," hereto annexed.

Harlie Frischneckt<sup>2</sup> and Clarence McVay on November 26, 1945, and December 7, 1945, respectively, because of their membership and activities in behalf of CIO and their refusal to join and pay dues to A.F.L., that the said dischargees were refused reinstatement for the same reasons for which they were discharged, except that some of the dischargees were rehired on or about February 7, 1946. The complaint further alleged that a certain collective bargaining contract entered into by Hume and AFL, on or about March 25, 1946, is illegal and void because it was entered into by the parties thereto with the knowledge that the question of representation of Hume's employees was pending undetermined before the Board.

The respondents duly filed a joint answer in which they admitted the allegations of the complaint with respect to the nature, extent, and character of their respective businesses but denied the commission of the alleged unfair practices. The answer also denied that at the time of the execution of the contract between Hume and A.F.L., on or about March 25, 1946, there was pending undetermined before the Board the question of representation concerning Hume's employees.

Pursuant to notice, a hearing on the complaint was held in Modesto, California, on April 10 and

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<sup>2</sup>Also referred to in the record as Harley Cruikshank.

11, 1946, before the undersigned, Howard Myers, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondents, C.I.O. and A.F.L., were represented by counsel and participated in the hearing. The parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence pertinent to the issues. At the opening of the hearing, counsel for A.F.L. moved to dismiss the complaint in its entirety on the grounds that (1) the proper forum to litigate the questions raised by the complaint is the United States Circuit Court of Appeals for the Ninth Circuit, (2) the Board, in its Supplemental Decision and Order of February 15, 1946, in *Matter of Bercut-Richards Packing Company, et al.*, having, in effect, decided that Hume and A.F.L. could not lawfully enter into a new contract, has disqualified itself from deciding this case, and (3) the complaint does not state a cause of action. The motion was denied by the undersigned with permission to renew.<sup>3</sup> A.F.L. then filed an answer denying, in effect, that the respondents committed the alleged unfair labor practices. At the conclusion of the taking of the evidence, Board's counsel moved to conform the complaint to the proof, with respect to minor matters, such as the correction of dates,

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<sup>3</sup>This motion was not renewed nor was any other motion to dismiss the complaint, or any part thereof, made during the course of the hearing.

misspelled words, and the like. The motion was granted without objection. Oral argument, in which counsel for all parties participated, was heard at the conclusion of the hearing and is part of the record. The parties were granted leave to file briefs on or before April 16, 1946, with the undersigned. A brief has been received from counsel for A.F.L.<sup>4</sup>

Upon the record in the case and upon his observation of the witnesses, the undersigned makes the following:

## FINDINGS OF FACT

### I. The Businesses of the Respondents

G. W. Hume Company is a California corporation having its principal offices and plant at Turlock, California, where it is engaged in canning and processing fruits and vegetables. More than 62 per cent of Hume's products, valued in excess of \$1,900,000 annually, are sold and shipped to customers located outside the State of California.

California Processors & Growers, Inc., is a non-profit California corporation, having its principal offices and place of business at San Francisco, California, where it is engaged in, among other things,

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<sup>4</sup>The time to file was extended to April 23, 1946. A.F.L.'s brief was received on April 29, 1946, but has nonetheless been given full consideration.

promoting friendly relations and cooperation between its 61 members and their respective employees; in ascertaining and disseminating among its members facts relative to employer-employee relationship; in representing its members as a group in collective bargaining with their respective employees; and in advising and conferring with its members relative to matters pertaining to their respective employees. Each member of the Association sells and ships a substantial amount of its products to points outside the State of California.

Each of the respondents concedes that it is engaged in commerce within the meaning of the Act.

## II. The Organizations Involved.

Food, Tobacco, Agricultural & Allied Workers Union of America, affiliated with the Congress of Industrial Organizations, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, affiliated with the American Federation of Labor, California State Council of Cannery Unions and its constituent unions, one of which is Local 22382, affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of Hume and employees of the Association's other members.

## III. The Unfair Labor Practices.

### 1. The Master Agreement and the Modification and Amendments Thereto

In the fall of 1940, Cannery Workers Union Lo-

cal 22382, a Federal Local Union of the American Federation of Labor, commenced an organizational drive among the employees of Hume, a member of California Processors and Growers, Inc., herein called the Association. At about the same time, the employees of the other members of the Association, were being organized by Local 22382 or by some other Cannery Workers Union, similarly affiliated. On or about June 10, 1941, an agreement, herein referred to as the Master Agreement,<sup>5</sup> was executed by and between the Association, as collective bargaining representative for and on behalf of its members which included the respondents Hume, and California State Council of Cannery Unions, herein called the Council, as the collective bargaining representative for and on behalf of the various Cannery Workers Unions. On or about July 3, 1941, pursuant to a provision of the Master Agreement, Hume executed an agreement with Local 22382 adopting the Master Agreement as applied to its operations. The aforesaid Master Agreement was amended on or about January 26, 1942, and again on or about July 10, 1943. In the latter year the American Federation of Labor also became a party to the contract, adopting and ratifying all the terms and conditions of the Master Agreement. The Master

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<sup>5</sup>Also referred to in the record as the "green book agreement."

Agreement, as last amended, was to continue to March 1, 1945, and thereafter from year to year unless either of the parties informed the others, within a specified time, of its intention to modify the said contract. No notice of intention to modify was served within the specified time prior to March 1, 1945, and the Master Agreement was automatically renewed to March 1, 1946.

The section of the Master Agreement, as amended, which directly bears upon the pertinent issues of this proceeding reads, in part, as follows:

Section 3. Preference of Employment and Hiring Practices.

(a) It is recognized that the refusal of Union members to work with non-union employees who are within the jurisdiction of the local Union shall not constitute a violation of this agreement, provided, however, that before any strike action, job action or other direct action is taken on this account, the local Union will submit the matter for adjustment as provided in Section 8 hereof.<sup>6</sup> In order to aid in the prompt adjustment of such matters, the Union shall furnish its members with a clearance card, dues book or other evidence of paid-up membership, and when employees who are on

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<sup>6</sup>Section 8 establishes the grievance procedure and provides for arbitration.



the seniority lists, as defined in Section 9 hereof<sup>7</sup> are called to work, the Employer will request that such evidence be presented by those who have it, and will keep a record, which will be available to the Union, of all employees who do not present such evidence. Similarly the Union will from time to time, when such information is available, notify the Employer of the names of delinquent or suspended members, or other non-union employees, according to Union records.

The Employer shall be the sole judge of the qualifications of all its employees, subject to appeal as provided in Section 8 hereof, but in the selection of new employees the Employer will give preference of employment to unemployed members of the local union, provided they have the necessary qualifications and are

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<sup>7</sup>Section 9 reads, in part as follows:

Said [seniority] list shall be based on the beginning date, as accurately as can be determined, of continuous regular employment or consecutive seasonal employment, as the case may be, as such employment is hereinafter defined. All employees covered by this agreement and referred to in Section 4 (a) hereof shall be named on said list.

Section 4 (a) states "all work performed in Employer's canneries and storehouses, warehouses, labeling rooms or in sheds or lots adjacent thereto, where commodities or materials are processed or stored."

available when new employees are to be hired.  
“New Employees,” for the purpose of this  
agreement, are defined to be persons who are not  
on the seniority list of the hiring plant, as de-  
finied in Section 9 hereof, even though they may  
have been employed previously by said plant.

As a basis for preferential consideration as new employees as aforesaid, unemployed members of the local union shall be required to present a clearance card from the local union evidencing the fact of their paid-up membership. If such union members are not available for such employment, the Employer may hire any person not a member of the Union provided that such person will be required to file an application for membership in the local union before being put to work. Upon filing such application he shall receive from the Union a written statement that he has made such application, which statement shall be taken up by the Employer and returned to the Union when the applicant is put to work. It is further understood that such person must become a member of the local union within ten (10) days after his employment, and that the local union will not reasonably refuse to accept such person as a member. (Underscoring supplied.)<sup>8</sup>

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<sup>8</sup>The matter in brackets is a modification made on or about July 10, 1943, due to the then existing man-

Subsection (b) of Section 3 provides for the mechanics of carrying out the foregoing and requires the contracting local union to have a representative available in the plant to receive the applications from new employees. In this subsection "the local union agrees to assume responsibility for completing the matter of subsequent affiliation by new workers as members of the Union."

On or about August 21, 1944, Local 22382 and Hume entered into the following agreement:

The Company hereby agrees to deduct from the pay of each employee employed by the Company who is covered by this agreement all Union dues and assessments, and for this purpose the Union shall provide the Company, on or before the first day of each month, the amount of dues payable per month to the Union by each member. Said dues shall be deducted from the pay check of the employee on any pay-day that falls on the day following performance of three days' work by the employees in any calendar month.

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power shortage, to permit the canneries to hire during the 1943 canning season "emergency workers" who, however, had to either file an application for membership in the local union of the Council or obtain an "emergency card" therefrom before being allowed to work.

The Company will promptly notify all employees of these conditions by placing an appropriate statement thereof on the bulletin board in the plant of the Company.

If any new assessment shall be levied as against members of the Union employed by the Company, such assessments must first be approved (sic) by the Union and notice thereof given to the Company before such assessments can be deducted from the salary of the employees by the Company.

Any sums deducted by the Company for the benefit of the Union in any months shall be payable to the Secretary-Treasurer of the Union on or before the 25th day of the following month. The Secretary-Treasurer of the Union shall furnish an appropriate receipt to the Company upon receipt thereof. The Company shall not be liable to the Union for any sums other than those collected by the Company.

The Company and the Union shall work out a mutually satisfactory agreement, by which the Company will furnish the Secretary-Treasurer of the Union, monthly, a record of the dues, from whom the deductions have been made, together with the amount of such deductions. (Under scoring supplied.)

In Witness Whereof we have hereunto set our hands and seals this 21st day of August, 1944.

GEORGE W. HUME  
COMPANY.

By R. G. HUME,  
President.

CANNERY WORKERS'  
UNION # 22382.

[Seal] R. M. TOMSON,  
Secretary-Treasurer.

Reference Is Made to "Dues, Collection and Check-Off Agreement Dated the 21st Day of August, 1944."

It is hereby mutually agreed and understood that this letter becomes a part of the above-mentioned Agreement for the purpose of fixing possible expiration date of the Agreement by notification by either party on or before March first of any year; the termination of the Agreement to become effective if notice is filed by either party on or before 12 o'clock noon on the first day of March of any year.

GEORGE W. HUME  
COMPANY.

By R. G. HUME.

Accepted This 21st day of August, 1944.

CANNERY WORKERS'  
UNION # 22382.

[Seal] By R. M. TOMSON,  
Secretary-Treasurer.

In June, 1945, the Association, the Council, and the American Federation of Labor entered into a written agreement which bore the following legend:

The within memorandum of agreement contains the amendments to the collective bargaining contract between California Processors and Growers, Inc., and The American Federation of Labor and California State Council of Cannery Unions, as negotiated during 1944 and as ordered by the National War Labor Board in Case No. 111-7430-D. This memorandum shall constitute an interim memorandum modifying the amended contract executed July 10, 1943 (originally adopted June 10, 1941), and the Supplementary Emergency Agreement of the same date in 1943, for the purpose of setting forth the understandings reached by the parties since March 1, 1944, and the subsequent directive orders of the War Labor Board, pending the conclusion of negotiations for the 1945 season, at which time it is contemplated that the basic agreement will be reprinted, with the following modifications included:

This agreement provided, among other things, for the inclusion of a new sub-section to Section 3 of the Master Agreement of June 10, 1941, as amended. This new sub-section reads as follows:

3 (c) The Employer will deduct from their wages and turn over to the proper officers of the

union the initiation fees and union dues of such members of the union as individually and voluntarily certify in writing that they authorize such deductions. Such authorization shall apply until or unless it is revoked individually and voluntarily, in writing, by such union members.

The Employer and the Union each agree that neither of them nor any of their officers or members, or employees, will intimidate or coerce employees into executing such certificates or causing them to be revoked. If any disputes arise as to whether there has been any violation of this pledge, such disputes shall be regarded as a grievance and submitted to the grievance procedure established by this agreement.

## 2. Attempts to Induce the Employees to Clear Through AFL

At or about the time of the execution of the 1945 agreement referred to in the immediately preceding paragraph, all the "regular" employees of Hume,<sup>9</sup> being some 20 or 30 in number, were assembled in the cannery during working hours and were ad-

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<sup>9</sup>At the time of this incident, the Hume Cannery was not in production and hence only "regular" employees as distinguished from "seasonal" employees were working in the plant. The names of the above referred to "regular" employees appear on Hume's seniority list.

dressed, in the presence of Factory Superintendent Fordham, by H. C. Torreano and L. B. Brown, representatives of Local 22382. Torreano and Brown suggested that Local 22382 affiliate with the Teamsters. The employees suggested that a vote be taken of the membership.<sup>10</sup> This suggestion was rejected by Torreano and Brown who informed the employees that the question of affiliation could not be voted. After a lengthy discussion the employees decided that they did not desire to affiliate with Teamsters. Torreano and Brown then left the cannery.

Later in June, 1945, each "regular" employee of Hume handed to President R. G. Hume his signed revocation of the dues check-off authorization previously executed. Thereafter no dues were deducted by Hume from the pay of its "regular" employees nor did these employees pay any dues thereafter to Local 22382 or to any affiliate of the American Federation of Labor.

In the early part of August, 1945, just prior to the peach canning season, the "regular" employees of Hume were notified by their respective foremen to assemble in one of the check rooms.<sup>11</sup> Besides Torreano, Brown, and Factory Superintendent Fordham, the meeting was attended by seven or

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<sup>10</sup>Local 22382 admits to membership employees of other canneries in the vicinity of Hume's.

<sup>11</sup>At the time of this meeting, only "regular" employees were working in the cannery.



eight representatives of Teamsters<sup>12</sup>, Assistant Superintendent Gallardo, and F. S. Clough, a field representative of the Association. According to the undenied and credible testimony of Employee Irwin C. Heagle, Clough sought to induce the "regular" employees "to clear through the Teamsters' organization in order to keep the plant operating in a peaceful manner" throughout the coming peach canning season. Heagle further testified, without contradiction, and the undersigned finds, that, in response to a question put to him, Clough stated that if these employees cleared through the Teamsters they would not be compelled to execute dues check-off authorizations; and that, relying upon Clough's assurances, all the "regular" employees of Hume signed the requested clearance slips at this meeting.

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<sup>12</sup>The record does not disclose the means whereby Teamsters became injected into the picture as representative of the employees other than that in May or June, 1945, President Green of the A.F.L. "ordered" Local 22382 to affiliate with Teamsters. There is no evidence of a merger of Teamsters and Local 22382, either by consolidation, absorption, or otherwise. In August, 1945, however, Teamsters appear to have taken control for all practical purposes and to be the group with whom Hume was dealing. This question is not material, however, to a determination of the present issues and for the purposes of this report, the term A.F.L. will be applied generally to such organizations here involved which are affiliated with the American Federation of Labor without attempting to distinguish between them as "Cannery Workers" or Teamsters, except when such distinction may be required by the matter then under discussion.

Those "regular" employees whose employment started after the execution of the Master Agreement, had cleared with Local 22382 when they were originally hired as "new employees"; and since then, as employees on the seniority list, no further clearance had been required of them either under the Master Agreement or by custom, for recurring seasons.

On August 8, 1945, the first day of the peach canning season, Heagle, who had been the chairman of the shop committee for Local 22382, complained to Fordham that all the seasonal employees were being "double crossed" because they were forced to execute dues check-off authorizations before they could obtain clearance slips. Heagle's protest was of no avail since General Superintendent Birchall continued to insist that all the seasonal employees, some of whom had worked for Hume for a great many years and obviously were on the seniority list, "clear with the union" before they could be put to work, notwithstanding that he knew Local 22382 was refusing to issue clearance slips until the employees should execute a check-off authorization reading as follows:

Authorization for deduction of Union  
initiation fees and Union dues.

I,....., a member of Cannery Workers  
Union . . . A. F. of L., and an employee of

..... at .....,  
do hereby individually and voluntarily certify  
that I authorize, by this writing, the above

named Company to deduct from my wages, and turn over to the Treasurer of Cannery Workers Union of . . . A. F. of L., any and all union initiation fees and dues certified by said Union to said employer now or hereafter to be due from or payable by me to said Union. This authorization is signed by me under the provisions of Section 3 (c) of the collective bargaining agreement between California Processors and Growers, Inc., and the American Federation of Labor and California State Council of Cannery Unions, and shall continue in force until or unless it is revoked individually and voluntarily by me, in writing.

Between August 8 and 13, approximately 150 of the 400 people then in Hume's employ executed and personally delivered to President Hume signed revocations of the dues check-off authorizations which they had been compelled to execute before clearance slips were issued to them.

3. CIO organizes the employees. Events leading up to the November 20, 1945 discharges.

During the latter part of August 1945, CIO commenced an organizational drive among Hume's employees. For some weeks previous, organizational drives were being conducted by CIO and another labor organization among the employees of other members of the Association as well as those of non-members. Numerous petitions had been filed by these 2 labor organizations with the Board seeking certifi-

cation of representatives of the employees in the various canneries. The Board, by appropriate order, consolidated these petitions and held hearing thereon on various days between July 3, and September 11, 1945.<sup>13</sup> On October 12, 1945,<sup>14</sup> the Board issued its Direction of Election and Order wherein it directed that an election by secret ballot be conducted under the auspices of the Regional Director for the Twentieth Region among the employees of all the members of the Association and certain non-members. In this order the Board found that the employees, with the customary exceptions, of all members of the Association, including the respondent Hume, constituted an appropriate unit.

Between October 11 to October 18, 1945, elections were held at the various canneries.<sup>15</sup> The election at Hume was conducted on October 17. Thereafter objections to the conduct of the elections were filed by AFL, and on the basis of such objections, the Board on February 15, 1946, issued its Supple-

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<sup>13</sup>This proceeding is entitled *Matter of Bercut-Richards Packing Company, et al.* AFL was a party to this proceeding and participated therein by counsel.

<sup>14</sup>On October 5, 1945, the Board issued a telegraphic decision subject to confirmation by a written opinion, which was issued on October 12, 1945.

<sup>15</sup>Except that an election at one of the canneries was held on December 20, 1945.

mental Decision and Order setting aside the elections.<sup>16</sup>

General Manager Birchall testified, and the undersigned finds that shortly after the 150 employees had handed President Hume their revocations of check-off authorizations, copies of which were sent to Local 22382, Brown and another Local 22382 representative sought to persuade the signers of the revocations to cancel them, but they refused to do so; that no dues were deducted from the pay of the signers of the revocations after their receipt by Hume; that early in November 1945, at the beginning of the fall spinach canning season, Local 22382 demanded that Hume "lay off or fail to employ all those who would not clear" through Local 22382; that on receipt of this demand, Brown, the representative of Local 22382 and President Hume placed a telephone call to the Association to check the legality of the request; that the conversation was be-

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<sup>16</sup>The tally of the votes at the elections of the employees of the Association's members show:

Approximate number of eligible voters.....	23,545
Valid votes counted.....	10,968
Votes cast for California State Council of Cannery Unions, A. F. of L.....	4,701
Votes cast for F.T.A.-C.I.O.....	6,067
Votes cast for Cannery and Food Process Workers Council of the Pacific Coast, In- dependent .....	110
Votes cast against participating labor organi- zations .....	90
Challenged ballots.....	1,291
Void ballots .....	248

tween President Hume and Clough; that Clough advised President Hume that the company had no right to discharge workers for their refusal to "sign up" with the union; that President Hume conveyed this information to Local 22382 and refused its demand; that on November 19, the Teamsters Union refused to allow E. J. Swanson Co., an independent truck contractor, to deliver spinach to the Hume cannery; that Torrealano informed President Hume, who arrived at the cannery at about 11 o'clock that night, "the spinach deliveries would be stopped until certain employees were discharged"; that on the following day, November 20, the employees could not work because AFL had placed a picket line around the cannery and refused to allow any truck to enter.

On the morning of November 20, a representative of Local 22382 telephoned President Hume and gave him a list of 28 persons whose discharge Local 22382 was demanding on the ground that they had not paid their dues and had been suspended. The telephone call was followed by a letter which was handed to President Hume later in the day. Upon receiving this demand, Hume assembled the "regular" employees, explained the situation, had the list of names read aloud by Heagle, and told those whose names had been read that they were laid off until the matter could be straightened out.<sup>17</sup> Follow-

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<sup>17</sup>The "regulars" who were thus laid off included, A. E. Berry, Ernest G. Bishop, Vider Bjorklund, Jasper J. Bobb, Harold Dillard, William J. Ely, Clyde Faddis, H. P. Frazier, Harlie Frischneckt, Irwin C. Heagle, Oscar Johnson, T. Boyd Mc-

ing this action, AFL lifted the picket line and allowed spinach to be delivered to the cannery.<sup>18</sup> Thereupon the operation of the cannery continued

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Kamey, Archie Miller, A. E. Moore, Harry E. Pier-son, Abe Thissen, Neal Watts, R. B. White, all of whose names are listed as "regulars" on Appendix B, hereto annexed. While Moore's name was not in the letter, it was one of those originally given Hume over the telephone. The omission, which was unintentional, was subsequently corrected on November 20, by telephone.

<sup>18</sup>By this time, the contest between AFL and CIO for representation of the employees of the members of the Association had reached a high pitch. The following letter, dated November 20, 1945, from the Association to the Council not only illustrates this, but also sets out with clarity, the position of the Association on the subject of discharges of employees for failure to maintain membership in good standing in their local union.

This will acknowledge receipt of your letter of November 17, 1945 concerning a bulletin alleged to have been issued by Local 82 FTA-CIO, and quoted by you as follows:

"We have reached an agreement with the California Processors and Growers and that no one has to pay dues to the AFL to work in the canneries. Every FTA-CIO member should immediately sign a revocation slip and start paying dues to Local 82, FTA-CIO."

Replying to your demand for "an official statement . . . as to whether or not any understanding or agreement had been reached between the FTA-CIO and the California Processors and Growers," the following is our response:

1. California Processors and Growers, Inc.

normal until the end of the spinach canning season on or about January 5, 1946.

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has reached no agreement with FTA-CIO that "no one has to pay dues to the AFL to work in the canneries."

In discussions with representatives of FTA-CIO, we have reiterated our position that the existing collective bargaining agreement will be observed by California Processors and Growers, Inc. Since these discussions, we have received a telegram from Edgar Warren, Director of Conciliation Service, U. S. Department of Labor at Washington, D. C., advising us that the contract with the AFL remains "in force and effect until March 1, 1946."

2. California Processors and Growers, Inc. has advised representatives of FTA-CIO that new employees are required to affiliate with the AFL as a condition of employment, and that canneries are required to supply the AFL unions with lists of all employees who fail to present evidence of AFL Union membership.

In discussions with representatives of FTA-CIO, we have outlined the procedures followed under the contract, and have advised them that despite the fact that we are not obligated by contract to discharge employees for failure to maintain union membership, nevertheless, all disputes arising in this connection are required to be submitted to the Central Adjustment Board, under the contract, for final determination.

We have in no wise changed our position concerning payment or nonpayment of dues, nor have we reached any agreement with FTA-CIO concerning revocation slips, which are controlled by the 1945 W.L.B. Directive Order.

A copy of this communication is being sent to the officials of FTA-CIO.



## 4. The November 20 and 21, 1945 discharges

On the morning of November 21, AFL blocked the entrances to the cannery and permitted no male employee, except ex-service men, to enter who was unable to exhibit a current clearance slip. Those who were barred included not only the group of "regulars" who had been "laid off" the previous day, but also some seasonal employees who were on the seniority list. These excluded employees attempted to force the picket line. A scuffle ensued and after it had been stopped by the watchman, Factory Superintendent Fordham was sent for.

Meanwhile, the women employees and the ex-service men who had been permitted to pass through the picket line without exhibiting clearance slips were being canvassed within the cannery by Assistant Superintendent Gallardo as to whether they were members in good standing in Local 22382. Those who were not, were told they could not work until they had cleared with Local 22382 and were sent off the job. These reached the outside while Fordham was addressing the men who had been excluded and were in the group as Fordham told the group that they could not work there, and ordered them off the premises.<sup>19</sup>

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<sup>19</sup>Fordham denied that he told the group that they were discharged, as testified to by several Board witnesses. He testified that he "told them to get off the property . . . until they had cleared with the union." The undersigned finds that the employees listed in Appendices B and C, hereto annexed, were in fact discharged at that time.

Pursuant to Fordham's orders, all those present, both the "regular" employees and those seasonal workers<sup>20</sup> on the seniority list whose names make up Appendix C, hereto annexed, left Hume's premises and were not rehired by Hume until early in 1946, as is hereinafter set out. Although the "seniority list" was not introduced in evidence, it is found that each of the persons "laid off" on November 20, 1945, and those seasonal employees who were discharged on November 21, 1945, whose names are listed on Appendices B and C, hereto attached, were employees coming within the Master Agreement's description of employees on the seniority list.

5. The discharge of Harlie Frischknecht

On November 20, 1945, Hume discharged Harlie Frischknecht under the following circumstances:

In April 1945, following his discharge from the

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<sup>20</sup>The seasonal workers who were thus discharged on November 21, 1945, included Clemie Robinson, Monroe Robinson, Thomas L. Broll, Ruth Waite, Agnes Hopkins, Myrtle Brown, Genevieve Alsup, Marguerite Watts, Clifford C. Luther, R. E. Rearick, all of whose names are listed as seasonal employees on Appendix C hereto annexed. The name of John M. Smith, a seasonal employee listed in the complaint, has been omitted from Appendix C and no finding is made with respect to his discharge since the record contains no evidence upon which to base a finding as to his status on November 21, 1945, or thereafter. Smith did not appear at the hearing. Accordingly, the undersigned will recommend that the complaint as to him be dismissed without prejudice.

Armed Forces, Frischknecht was hired by Hume as a "new" employee and given "regular" employment in the warehouse. At the time of his employment, Frischknecht complied with the requirements of the Master Agreement by making application for membership in Local 22382, and received the clearance slip that was necessary to enable him to begin work with Hume. In August 1945, warehouse Superintendent Granberg, told Frischknecht and the other warehouse employees that they would have to obtain new clearance slips "through the AFL in order to work" and sent them to an AFL representative in the vicinity of the payroll office who, he said, would sign them up. Frischknecht went as directed and told the AFL representative that he did not want to "get mixed up with the Teamsters". Nonetheless, the representative insisted that Frischknecht not only sign a clearance slip but that he execute the check-off authorization heretofore referred to. Frischknecht did as required and returned to work. Later in the day, he executed and delivered to Hume a revocation of the check-off authorization.

In its records, Local 22382 appears to have erroneously entered Frischknecht's name as Harley Cruikshank, for in its letter of November 20 to Hume demanding the dismissal of the warehouse crew, it omitted the name "Harlie Frischknecht" but included the name "Harley Cruikshank", although there was no person of that name employed by Hume. On receipt of this letter from Local 22382, the warehousemen were assembled and told that they would be laid off. The confusion of names led to

some inquiry by Frischknecht as to whether he was included. He was told that his name was not on the list but had his attention called to the "Cruikshank" name. Actually Frischknecht had paid no dues, was a part of the delinquent group, and was unable to understand why his name should be omitted. He joined the others when they left the cannery pursuant to the group lay-off above described.

On November 21, the group arrived at the cannery at about 8 in the morning and attempted to go through the picket line. The scuffle heretofore referred to took place, following which Fordham appeared, told the group, including Frischknecht, that they could not work there and ordered them away.

The following Monday, November 26, Frischknecht again went to the plant where he inquired of Birchall as to whether his name was on the list. After consulting the list, Birchall told him he was not on the list and sent him in to work. He worked about 4 hours. He testified that then

the AFL man came around and wanted to know if I was going to go up before a board and pay my back dues, and everything, and I talked with him there quite a while, and he said he would vouch for me if I wanted to go into the AFL, and I told him I would think it over, and when noon come I got to thinking about it, and I found out we would have to pay dues to the AFL, so I just left and never reported back

to work anymore, because I did not figure on paying AFL dues.

Frischknecht was in the same position as were all the others in the warehouse group. Only the circumstance of the error in names excluded him from being included in the group listed on Appendix B, hereto annexed. He realized this. He had joined the CIO some months before and knew he was in default of dues in AFL. The discharge of November 20 and the confirmatory action by Fordham on November 21 was notice to him of the intent to include him when the name Cruikshank was erroneously used. His conversation with the AFL representative on November 26 was further notice that it was through error that he had been permitted to return to work on that day. When he left the job, it was with the appearance of having done so voluntarily. Actually, however, there was nothing voluntary about it. His termination actually took place on November 20, and it is so found, but whether the 20th or 26th, it was impelled by Hume's conduct toward the group and the knowledge, based on that experience, that his refusal to reinstate himself with AFL would result in his dismissal. Under such circumstances, Frischknecht's termination is found to be a discharge attributed to Hume's conduct, based on Frischknecht's refusal to maintain membership in good standing in AFL. This finding is buttressed by Frischknecht's undenied and credited testimony that shortly after November 26, he was told by Supervisor Orville Hopkins that he would not be able to work unless he "would sign up with the AFL."

## 6. The discharge of Clarence McVay

Clarence McVay, a seasonal employee, was discharged by Hume on December 7, 1945, for failure to maintain his membership in Local 22382. When McVay was first hired by Hume sometime in 1945, he received a clearance from Local 22382, obviously after he had made application for membership in that organization, and at the same time executed a dues check-off authorization. However, he revoked the check-off authorization soon after its execution and never paid any dues to Local 22382. On December 7, 1945, a representative of Local 22382 came to the cannery and told McVay, in the presence of his foreman, that if he did not pay his union dues he could not work. When McVay refused, his foreman, at the request of the representatives of Local 22382, took McVay's time card, punched it out on the clock, and handed it to McVay. McVay then placed the card in the box where punched cards are usually placed and left the cannery. The undersigned finds that McVay was discharged by Hume on December 7, 1945, because of his failure to pay dues to a labor organization.

## 7. Hume's attitude toward compulsory maintenance of membership

From the time the Hume employees revoked their dues check-off authorizations in June 1945, Hume endeavored to induce its employees to comply with AFL demands and pay dues to the AFL. These efforts were made, as Birchall and President Hume

admitted at the hearing, for the purpose of maintaining harmonious relations with Local 22382 and to induce the Teamsters to permit spinach and other products to be shipped in and out of the Hume cannery. Hume's actions appear to have been based on an erroneous understanding of the Master Agreement, but this was clarified and in November before any of the discharges herein discussed took place. As a result of advice Hume received concerning the provisions of the Master Agreement it refused the demands of AFL to discharge any employee for failure to maintain good standing membership in Local 22382. However, as a result of the AFL pressure it capitulated as found above. This finding is buttressed by the credible testimony of Birchall who testified as follows:

At that time of the fall spinach signup, the management, R. G. Hume, was told by the union representatives, Brown and Evans . . . to lay off those workers who refused to sign up. These included full time workers who had been working all year. Whereupon Brown and Hume placed a call to the C. P. & G.<sup>21</sup> to check the legality of the union's request. A conversation between Hume and Clough. Clough advised that the company had no right to discharge workers . . . for their refusal to sign with the union. The company conveyed this information

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<sup>21</sup>C.P.&G. is referred to herein as the Association.

to the Union. . . . The company conveyed this information to the union, and acted accordingly. Before checking with the C.P.&G., the company was under the impression that the workers had to sign up in order to stay on the job, and those workers who were hired were so informed. This position was reversed and clarified upon receipt of the C. P. & G.'s advice. No workers were discharged at this time because of their failure to sign up.

#### 8. Reinstatement in 1946

On February 7, 1946, Hume rehired some of the regular employees it had laid off on November 20, 1945. Others were rehired from time to time thereafter.<sup>22</sup> These persons were rehired and were in Hume's employ at the time of the hearing, despite the fact that they had not paid dues to Local 22382 since June 1945, and obviously had not presented any clearance credentials.

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<sup>22</sup>While the record is clear that some of the group were discharged on November 20, 1945, were subsequently re-employed by Hume for portions of the canning seasons, it does not reflect with definitiveness all of those who were so rehired nor the length of their respective employment after being rehired. For this reason no specific finding is made as to the extent of re-employment by Hume of any of those who are here involved, except as to Clarence McVay and John M. Smith, seasonal employees on the seniority list, neither of whom was rehired by Hume in any capacity, and Oscar Johnson, a "regular" employee who entered the Armed Services sometime after November 20, 1945, and was still in the services at the time of the hearing herein.



On February 8, 1946, a special meeting of the Central Adjustment Board<sup>23</sup> was held. According to the minutes of that meeting the following ensued:

Chairman Pankey presented the complaint involving the G. W. Hume Co. dated February 4, 1946 as follows:

Nature of Complaint:

"The G. W. Hume Company has mailed letters to approximately twenty-five ex-members of Local Union #22382 who were not in good standing.

"The letters mentioned above advise and request these ex-members return to work at the Hume plant on Thursday, February 7, 1946."

Mr. St. Sure described the various discussions held in the recent past concerning the application of Section 3 (a) of the agreement, stating that those discussions have resulted in no common agreement between union and employer representatives concerning the interpretation of Section 3 (a) of the contract.

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<sup>23</sup>The Master Agreement provides for a Central Adjustment Board, composed of an equal number of representatives of the Association and of the Council, to adjust grievances which cannot be satisfactorily adjusted by the individual member. The agreement further provides that the decisions of the board shall be final and binding upon the parties concerned, unless there is a deadlock among the members of the board, then, in that event, an outside person, mutually satisfactory, shall be called upon to make the final decision.

Mr. St. Sure described the question at issue in this case as follows:

“Whether the G. W. Hume Co., a member of California Processors and Growers, Inc., in accordance with the terms of the collective bargaining agreement between California Processors and Growers, Inc. and California State Council of Cannery Unions, and/or the agreement between G. W. Hume Co. and Local Union 22382, and/or the past practices of the union and the plant management, is required to maintain a union shop.”

It was moved by Mr. Elorduy, seconded by Mr. Rizzo, that the G. W. Hume Company be required to maintain a union shop in accordance with the above considerations which comprise the issue.

The following were designated as voting members:

Ted Lopez	A. W. Ford
Harry Rizzo	Ralph Wanzer
Mike Elorduy	A. I. Walters
Rose Sanders	Sam Kai Kee

A secret ballot resulted in a four to four vote; whereupon the Board ordered the case transmitted to an arbitrator for decision.

Following discussion upon the choice of an arbitrator, it was mutually agreed by all parties that the U. S. Conciliation Service would be requested to appoint a permanent staff member of that Service as arbitrator and the secretaries of California State Council of Cannery Unions and of California Proces-

sors and Growers, Inc., were directed to prepare and transmit the Stipulation to Arbitrate.

The same day, the following "Stipulation to Arbitrate" was entered into by the Association and the Council:

It is hereby agreed by the parties listed below that the issues described below shall be heard by an arbitrator to be named by the Director of the U. S. Conciliation Service, Department of Labor, said arbitrator to be a member of the permanent staff of the U. S. Conciliation Service.

The issues to be determined are as follows:

Whether the G. W. Hume Co., a member of California Processors and Growers, Inc., in accordance with the terms of the collective bargaining agreement between California Processors and Growers, Inc., and California State Council of Cannery Union, and/or the agreement between G. W. Hume Co. and Local Union 22382, and/or the past practices of the union and the plant management, is required to maintain a union shop.

The decision of the arbitrator shall be final and binding upon the parties. No price issue is involved.

By letter dated April 3, 1946, George Cheney, the arbiter designated by the United States Conciliation Service of the United States Department of Labor confirmed the oral statement he had made to counsel for the Association several weeks prior thereto that he would not serve as arbitrator in the matter. At the time of the hearing no other arbitrator had been appointed and nothing further had been done in the matter.

## 9. Vacation of Election Results.

On February 15, 1946, the Board issued a Supplemental Decision and Order in the "Bercut-Richards" matter wherein the Board, one member dissenting, ordered the elections which had been held pursuant to its Direction of Election in that consolidated case, vacated and set aside. The majority decision of the Board reads, in part, as follows:

Upon consideration of all the foregoing facts, we are of the opinion that the elections were not, under the circumstances here presented, attended by such procedural safeguards or certainty concerning eligibility as to constitute a proper foundation for a Board certification in an industry which had been the scene of such bitter strife. There is substantial doubt whether the results are truly representative of the desires of the employees who should have been eligible to vote therein. (See Matter of Kennecott Copper Corporation, 55 N.L.R.B. 928. See also, Matter of Mobile Steamship Company, 11 N.L.R.B. 374). It is of vital importance to the Board's effectuation of the policies of the Act that the integrity of its procedures be maintained at all times and at all cost, and that the regularity of the conduct of its elections be above reproach. In this view of the matter, it is relatively unimportant that there is no sure proof that one party to the election was prejudiced more than the other.

We therefore are constrained to conclude that the balloting was not conducted in accordance with

our usual standards or under conditions tending to create confidence in the result or to lay the foundation for satisfactory bargaining. We are of the opinion, therefore, that the purposes of the Act will best be served by setting aside all of the elections held herein.

While we view the record as requiring this result, we reach it with considerable reluctance because it means that the employees will have no bargaining representative to negotiate an exclusive collective agreement to cover the coming season, until a new election can be held which may result in one of the rival unions being certified. The current A.F.L contract will expire on March 1, and since the legal effect of the foregoing determination is to keep the question of representation pending before the Board, none of the unions is entitled to an exclusive status as the bargaining agent after that date. In accordance with well-established principles, (see *Midwest Piping & Supply Co., Inc.*, 63 N.L.R.B. 163. See also *Matter of Ken-Rad Tube & Lamp Corp.*, 62 N.L.R.B. 21), the employers may not pending a new election, give preferential treatment to any of the labor organizations involved, although they may recognize each one as the representative of its members. In this state of the record, no legal effect may be given the closed-shop provision contained in the current collective agreements after their expiration date; (moreover, no requests for discharges resulting from activity in the election are justified even under the present agreement. See *Matter of Rutland Court Owners*, 44 N.L.R.B. 587,

46 N.L.R.B. 1040), the inclusion of any such provision in any new agreements, or action pursuant thereto, would clearly be contrary to the proviso in Subsection 8 (3). Nothing in our decision, however, should be construed as requiring any change in the substantive conditions of employment now existing by virtue of the foregoing agreements.

In order to expedite final disposition of the case, the Board will conduct new elections as soon as eligibility lists can be prepared which meet the objections discussed herein. Upon appropriate motion, the Board will explore the possibility of holding the election at an early date by use of mail ballots as well as by the manual method, provided the feasibility of this procedure, with adequate safeguards, can be demonstrated by the submission of data not incorporated in the present record. As an alternative, the Board will consider holding a new manual election as early in the 1946 season as there is substantial reemployment.

In setting aside these elections, we are aware of the fact that the procedural defect arising from the absence of a master eligibility list is not applicable to the elections held among employees of the Independent Companies. However, the other defects based on uncertainty concerning the meaning of 25-day eligibility rule and the action taken respecting employees "temporarily laid off," are just as applicable to these elections as they are to the elections held among the employees in the CP&G unit. We are of the opinion that by reason of these difficulties, the elections conducted among employees of

the Independent Companies raise such a possibility of error that such elections should also be vacated and set aside. As a practical matter, this will be in harmony with our ruling regarding the elections in the CP&G unit and will avoid inconsistent disposition of the problems of the cannery industry.

Sometime prior to March 1, 1946, but after the issuance, and the receipt of copies thereof by the parties thereto, of the aforementioned Supplemental Decision of the Board, AFL served a demand upon the Association for a contract to replace the Master Agreement, which after the service of the said demand, was to terminate by its own terms on March 1, 1946. In its demand AFL stated, among other things, that it wanted "a contract on behalf of our organization that continues to give us exclusive bargaining rights and that affords us a union shop."

On or about March 25, 1946, the following agreement was entered into:

This Memorandum of Agreement, made and entered into this 25th day of March, 1946, by and between G. W. Hume Co., located at Turlock, California, hereinafter referred to as Employer, California State Council of Cannery Unions, A. F. of L., and Cannery Workers' Union, Local 22382, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, A. F. of L., hereinafter referred to as Union,

Witnesseth: That in consideration of the premises it is mutually agreed as follows:

1. It shall be a condition of employment with the employer that all employees covered by this

agreement shall become and remain members of the Union in good standing. Present employees who are not as of the date of this agreement members of the Union must become members within ten (10) days from the date hereof. Any new employee shall be required within ten (10) days of the date of hiring to become a member of the Union and thereafter remain a member in good standing.

Persons who fail to maintain good standing in the Union in accordance with the By-Laws thereof shall be discharged within thirty-six (36) hours after the company is so notified by the Union.

In the hiring of additional employees, the employer shall give preference to unemployed members of the local Union provided such individuals have the necessary qualifications and are available within forty-eight (48) hours after being notified. As a basis for preferential consideration unemployed members of the local Union shall be required to present a clearance card from the local Union, evidencing the fact of their paid-up membership.

2. Any adjustment in wages, hours or conditions, which may hereafter be agreed upon by the parties, shall be effective as of March 1, 1946, and retroactive to that date.

The record shows that the parties to the foregoing contract intended it to be an agreement of indefinite duration, incorporating all the terms of the Master Agreement which were not inconsistent with the March 25, 1946, contract. In short, the parties intended it to be a new over-all agreement providing for a closed-shop plus the pertinent provisions of the Master Agreement.



In addition to all the foregoing, it is to be noted that after March 1, 1946, Hume admittedly permitted representatives of Local 22382 free access to the cannery for the purposes of collecting dues and soliciting membership but at the same time denied like privileges to representatives of CIO.

## Analysis and Conclusions Concerning Events

Prior to March 25, 1946

### 1. The Discharges Under the Master Agreement.

There is no dispute as to the foregoing facts. The issue, as it arises from them turns on the questions whether, as a condition of continuous employment, (1) all employees on the seniority list, which included the "regular" and seasonal employees here involved, were required to become members of Local 22382 and (2) whether employees, once having taken out membership in the Union, were thereafter required to maintain such membership in good standing.<sup>24</sup>

Both of these questions must be resolved in the negative. The Master Agreement clearly exempts employees on the seniority list from being required to obtain clearance slips as a condition for going to work from season to season and is wholly silent as to the "regular" or year round employees. The most it does with reference to the employees on the

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<sup>24</sup>The record indicates, although it does not clearly reflect, that all the discharged employees here involved had been members of Local 22382 up to June 1945, when they abandoned their membership.

seniority list is to require the employer to report to the local union, from time to time, the names of those in its employ who did not produce clearance slips on their resumption of work. This part of the agreement contains no language that can be construed to mean that any employee on the seniority list may not be put to work without a union clearance or that he must be a member in good standing or a member at all, to qualify for employment. Nor is there any provision in the Master Agreement that requires an employees who had joined a local union, to maintain his membership in good standing, as a condition of employment. The sole requirement that the agreement imposes upon the employer in this respect is to see that "new employees," as distinguished from employees on the seniority list, file applications for membership in the appropriate local union when they go to work and to notify the new employees that, under the Master Agreement, they must complete their application with the local union within 10 days. The employer's responsibility for the new employees' affiliation ends upon the making of such applications by them and the giving of such notices. The local union expressly assumes, under the terms of the Master Agreement, full responsibility for the new employees' affiliation with it from that point forward. The Master Agreement is likewise silent as to the obligations of the new employee to the local union after his application has been made at the time of his employment, except that within 10 days thereafter he must become a member. It imposes no other obli-

gations with respect to the employee's tenure of employment. At best, the Master Agreement is no more than a preferential hiring contract.<sup>25</sup>

The employees here involved were discharged at the instance of Local 22382 because of their failure and refusal to pay dues to that organization and to obtain from it clearance slips, obtainable only by those in good financial standing. All of them were either "regular" year round employees or seasonal employees on the seniority list. None were required, under the clear terms of the Master Agreement, to carry or exhibit evidence of being in good standing in the local union. Those who had been members of Local 22382 had elected to abandon it. That was their right in the absence of a contractual obligation to maintain their membership.

The Master Agreement, to be sure, recognizes the right of union members to refuse to work with non-union employees and provides that such a refusal shall not constitute a breach of the agreement. AFL contends that this provision is tantamount to a requirement that every employee must maintain membership in good standing in the appropriate local union as a condition of employment. Even if such reasoning were sound, which it is not, the right is not absolute under the terms of the agreement. The right may not be exercised until the matter has been submitted to the grievance procedure of Section 8 of the Master Agreement and

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<sup>25</sup>The status of the contract of March 25, 1946, is separately discussed below.

has ultimately been disposed of, either by the Central Adjustment Board or by a named arbitrator. In any event, the Agreement sustains no such interpretation as that proposed by AFL. The contention is therefore without merit.

In this situation, it may be said that AFL was relying on that provision in picketing Hume's cannery and permitting no one to work therein without a clearance slip, but such reliance was wholly contrary to the terms of the agreement. AFL usurped the grievance procedure of Section 8, by its insistence that the employment of the persons here involved be terminated for failure and refusal to maintain membership in good standing in Local 22382. The Master Agreement lends no justification for the discharges here involved. The sole reason for the discharges was the refusal of the employee to comply with Hume's demand that they join or reinstate themselves in Local 22382 and thereafter remain in good financial standing, which position was brought about through AFL's threat of economic hardships to Hume if the employees did not comply.

In its brief, AFL appears to stress the compulsory check-off agreement entered into with Hume in August 1944, as a closed-shop agreement. This contention is without merit and it is not supported by the record. The agreement clearly was intended as a supplement to the Master Agreement. If it had any force as a closed-shop provision, it was completely abrogated by the memorandum of June 1945, amending the Master Agreement which was made

pursuant to a directive of the National War Labor Board, which provided for voluntary check-offs revocable at will. Moreover, by its language, the August 1944 agreement contains no provision that can be construed to compel every employee to be and remain a member in good standing in Local 22382. The agreement clearly applied only to the members of that organization and at most imposes an obligation on Hume to make deductions from the pay of union members and turn it over to Local 22382. If Hume failed to do this, the question was between Hume and Local 22382. Hume's failure still could not impose an obligation on a member to pay his dues. The agreement is also silent on the proposition that the employees must remain in good standing in Local 22382 as a condition of employment. In short, the agreement has no bearing on the issues here.

It has been found that no contractual relationship required the discharges. The discharges were brought about through coercion of Hume by AFL. Discharges thus brought about are not excused or exempted by the Act.<sup>26</sup> The discharges were discriminatory and designed to support and encourage membership in AFL and to discourage membership in any rival labor organization, and therefore interfered with, restrained, and coerced the employees in the exercise of the rights guaranteed in Section 7 of the Act, and the undersigned so finds.

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<sup>26</sup>N.L.R.B. v. Star Publishing Company, 97 F. (2d) 465 (C.C.A. 9).

## 2. The Board's Jurisdiction versus Contract Provisions.

The respondents and AFL also argued that the Board should not assume jurisdiction over the controversy involving the discharges here considered in the face of the contractual provisions for the disposition of grievances through the Central Adjustment Board and, in event of a tie vote in that board, through a third party who would serve in the capacity of an arbitrator. The Master Agreement provides that a decision reached through such procedure shall be final and binding upon all parties.

Section 8 of the Master Agreement provides:

In addition to the power to adjust grievances referred to it by local unions or the Employer as hereinabove provided, and the determination of appeals in cases of contested discharge, the Adjustment Board shall have the power and responsibility to investigate and determine all matters arising under Section 3(a) hereof relating to the refusal of union members to work with non-union employees. In all such cases notice of the existence and nature of such dispute shall be submitted in writing to California Processors and Growers, Inc., by the local union, in addition to presentation to the Shop Committee and/or local business agent as hereinabove provided.

and further provides:

In addition to meetings called to consider specific disputes as herein provided, the Central Adjustment Board shall meet at least once a month, or at

other times determined by mutual agreement of the members thereof, for the purpose of considering any matters, in addition to the adjustment of grievances presented by any party hereto, that may relate to the interpretation or administration of the provisions of this agreement. All decisions of said Board in adjusting grievances, and all determinations of said Board relating to the interpretation or administration of this agreement shall be reduced to writing and shall be sent to each local union and to each Employer, party to this agreement. Adjustments or interpretations made in settlement of local disputes prior to submission to the Board shall not be binding upon the Central Board, but any adjustment or interpretation made by the Central Board shall be binding on all parties hereto.

In February 1946, the question concerning these discharges came before the Central Adjustment Board, not on the merits of the discharges themselves, but on the question of whether Hume might rehire the discharges without requiring clearance with Local 22382. On an even decision, it was determined to submit the question of the "closed shop" or "union shop" issue to an arbitrator to be appointed by the United States Conciliation Service from among the permanent staff members of that Service. In March 1946, the arbitrator so designated declined to act. At that time a charge had been pending before the Board and was under investigation. The Board did not assume jurisdiction over all the subject matter until March 27,

1946, when its complaint was issued, at least a week after the designee of the Conciliation Service had declined to serve.

Under such circumstances, it is not necessary to dispose of the technical question of a conflict between the exercise by the Board of its functions in this case and the operation of the terms of the Master Agreement. The question concerning the discharges and its consideration by the Board does not impinge upon any of the rights of any of the parties to the Master Agreement. It is the function of the Board to follow the mandate of the Act in the interest of the public welfare. Its power and duty to do so, expressed in Section 10(a) of the Act, is "exclusive, and . . . not . . . affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise."

Contractual provisions for the settlement of grievances or disputes are orderly procedures for the avoidance of interruptions to interstate commerce and trade, brought about by collective bargaining, and are encouraged by the Act. Whether the Board may override such provisions and, ignoring them, assume jurisdiction and determine question which might properly have been handled under the grievance procedure of a contract, is not here involved. Here the arbitration procedure had broken down and no steps have been taken to proceed further. Meanwhile, a question of unfair labor practices affecting commerce and the public welfare in a very material way has arisen. The Board



has a duty in such circumstances to resolve it and apply a remedy, especially in a case where, as here, the contract contains no justification for the discharges under consideration. Admittedly, the situation in the instant proceedings created by the demands of AFL that these employees be discharged regardless of the terms of the agreement, set up an obstruction to interstate commerce; but the manner in which Hume met the situation was violative of the Act for it deprived its employees of the rights guaranteed them by the Act. Without Board action, the situation has no prospects of being remedied and the existence of an unused remedial provision in a private agreement may not be allowed to paralyze the Board's statutory grant of exclusive jurisdiction.<sup>27</sup>

### 3. Contentions That the Board Has Heretofore Determined the "Closed-Shop" Issue

The Association and AFL vigorously contend that the Board, in its Supplemental Decision in the Matter of Bercut-Richards Packing Company, et al., has foreclosed any question as to the closed-shop character of the Master Agreement and has given the agreement official sanction as a closed-shop contract when it said

. . . No legal effect may be given the closed-shop provision contained in the current collective agreements after their expiration date . . .

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<sup>27</sup>Cf. *N.L.R.B. v. Newark Morning Ledger Co.*, 120 F. (2d) 266 (on re-argument) (C.C.A. 3), cert. den. 314 U. S. 693.

The language of the Board carries no such import. In the first instance, the nature of the Supplemental Decision was such that it could in no way be regarded as a determination of anything beyond the fact that the elections, as contended, did not afford the employees a full opportunity to make a free choice and that under the circumstances the elections must be set aside and others held at an early date. The position of Board's counsel that the language was intended to advise the parties of their broad over-all legal rights and obligations in the interim is sound. But, for the purpose of setting at rest the contention of the Association and AFL that the language is of the nature of a commitment by the Board or of a prejudgment on its part of the issues involved in the instant proceeding, it must be and it is found to be without merit. Through the development of machinery for "union security," the term "closed-shop" has taken on a generic meaning, applied generally by laymen, to any provision of a contract that contains an element of compulsion in the matter of becoming a member of the contracting union or maintaining membership in good standing therein. In the Matter of Bercut-Richards Packing Company, et al., the Master Agreement was not under investigation. The Board there was not confronted with the problem of evaluating it, as it is here. In the proceeding out of which the Supplemental Decision arose, the term "closed-shop" had been bandied about. Each party thereto commented on it and each recognized that the Master Agreement contained some

elements of compelling at least certain employees to become members of a local union. The Board, on prior occasions, has been confronted with other contracts containing provisions for compulsory membership, that have expired in the midst of representation proceedings.<sup>28</sup> It would appear that the language used by the Board was but a warning against repetition of such conduct of employers in other cases which had previously been found to be violative of the Act. It makes no difference whether the provision is one for maintenance of membership, a union shop, a closed-shop, or a preferential shop—all of them come within the layman's broad generic term "closed-shop provisions." It cannot be found that the language was intended to be a determination of the exact character of the contract.

### 3. Contentions Relative to Interpretation of Master Agreement by Parties Thereto.

The contentions of the respondents and AFL that during the life of the Master Agreement the parties thereto had interpreted it as requiring membership in good standing in an appropriate local union as a condition of employment are not supported by the record. Prior to about November 1945, there appears to have been some uncertainty with Hume as to the application of the agreement in requiring membership in good standing as a condition of employment. There is some evidence that Assistant

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<sup>28</sup>See Matter of Phelps Dodge Copper Products Corp., 63 N.L.R.B. 686, 687.

Superintendent Gallardo, at the instance of Local 22382, had, from time to time, between 1941 and 1944, informed employees that they could not work there unless they had clearances with Local 22382 and that such non-union employees either did not report for work again or obtained clearances. R. M. Tomson, secretary-treasurer and business manager of Local 22382 from about July 1942 to June 1945, and president of the Council from about February 1944 to June 1945, admitted on the witness stand that the only times the Council or Local 22382 had asserted that the Master Agreement was a closed-shop contract was when "they thought they could get away with it." He testified that the Council always sought a closed-shop contract but that the Association would never agree to the granting of one.

However, with the amendments to the Master Agreement in the June 1945 memorandum, made pursuant to a National War Labor Board directive, the situation began to clear itself and early in November 1945, on a direct inquiry by Hume to Clough, a field representative of the Association, Hume was informed by Clough that the Master Agreement contained no compulsion on the employees who were on the seniority list to become or remain members of Local 22382. Following this advice, according to the testimony of General Manager Birchall above quoted, Hume consistently followed Clough's interpretation, advised Local 22382 of its position and thereafter refused to accede to any of that union's demands for discharges because of failure to main-

tain membership in good standing in it, until the discharges here involved took place.

That the Association does not and has not regarded the Master Agreement as either a "closed shop agreement" or a "maintenance of membership agreement," runs through the entire record and is confirmed, not only by Clough's advice to Hume but by the position taken by the Association before the Central Adjustment Board in February 1946, and also before this Board when, during the oral argument in Washington, D. C., before the Board in the Matter of Bercut-Richards Packing Company, et al., on January 24, 1946, respondents' counsel, in response to a question put to him by Board Member Reilly, stated:

... The contract we have provides that initial employment shall call for affiliation with the union, but the contract itself does not expressly require that we discharge people for not maintaining good standing in the union.

A. F. of L. maintains the side that we have a union shop and should discharge people. We are in that conflicting position. The contract does not express it. The A. F. of L. observes us as a union shop and they have picketed us for not doing so. That contract is in effect until the 28th of February. It is our position that it is in effect, because the Board assumed that it was in its decision; although I understand some question has been raised to that. We assume it is in effect.

From the foregoing, the undersigned finds that the contract was not, either by mutual consent or custom, regarded by the parties as one requiring membership in good standing in the local union as a condition of employment, but that it was, in accordance with its clear terms as heretofore found, devoid of any provision requiring employees on the seniority list to be or become members of the local union, or requiring any employee to maintain his membership in the union after becoming a member.

### The March 25, 1946, Contract

#### 1. Execution Thereof During Pendency of Representation Proceeding

On February 15, 1946, the Board issued its order setting aside the elections in the Matter of Bercut-Richards Packing Company, et al., for reasons set forth in its Supplemental Decision of that date. The Board therein stated that new elections would be conducted at an early date. The decision also recites

The current AFL contract will expire on March 1, and since the legal effect of the foregoing determination is to keep the question of representation pending before the Board, none of the unions is entitled to an exclusive status as the bargaining agent after that date. In accordance with well-established principles, the employers may not pending a new election, give preferential treatment to any of the labor organizations involved, although they may recog-

nize each one as the representative of its members. In this state of the record, no legal effect may be given the closed-shop provision contained in the current collective agreements after their expiration date; the inclusion of any such provision in any new agreements, or action pursuant thereto, would clearly be contrary to the proviso in Subsection 8(3). Nothing in our decision, however, should be construed as requiring any change in the substantive conditions of employment now existing by virtue of the foregoing agreements.

Notwithstanding this admonition by the Board, Hume entered into the contract set out at length in Section III A above, on or about March 25, 1946.

The respondents and AFL contend that since the Board had set aside the elections in *Matter of Bercut-Richards Packing Company, et al.*, Hume was not only free "to deal with and recognize the AFL as the exclusive representative of the employees but the employer is obligated to do so." By a process of elimination, AFL reasons that since no other selection has been made, it remains the choice of the majority and therefore is entitled to be recognized and dealt with as such, on the theory that once a majority representative status has been established, the representative continues until another representative had been selected and certified as such by the Board. The decisions cited by AFL in its brief in support of its contention are directed to this point alone. They do not touch on the situa-

tion that is created when a question concerning representation has arisen between rival organizations and the matter is pending before the Board for determination. Because they are not in point, it would serve no useful purpose to here discuss them.

It is undisputed that at the time the agreement of March 25, 1946, was executed, a proceeding was pending before the Board for the determination and certification of the collective bargaining representative of not only Hume's employees but also the employees of all the members of the Association as a single appropriate unit. The Board had determined that the appropriate unit consists of all the production and maintenance employees of the members of the Association, with certain specified exceptions, and the proceeding had reached the stage where an election had been held and ultimately set aside at the insistence of AFL. While the voting at the election determined nothing, it reflected that CIO was the preferred representative of a very substantial number of the employees of the Association's members, which included Hume. The question then pending was a very real one as to who represented the employees. It still is and it cannot be determined until the Board's processes have been exhausted in a valid election or elections.

Hume and AFL were not free to enter into a collective bargaining contract merely because the Board had set aside the elections. An election is only one step in the investigatory processes of the Board to determine who represents the employees.



The process starts with the filing of a petition. It then goes through the preliminary field investigation on which rests the decision as to whether to proceed further. If further proceedings are to be taken, a hearing is held at which the parties advance their ideas as to the appropriateness of the unit and other pertinent matters. The Board, after considering the record made at the hearing, either decides to proceed no further or to conduct an election by secret ballot to determine the desires of the employees in the unit it has found to be appropriate. After the election, the Board considers all questions raised as to the validity of the election. If the Board finds that the election was conducted in such a manner, or under such circumstances, that it does not reflect a free expression of choice of those entitled to participate therein, the Board may, and usually does, set it aside and orders a new election. After a valid election has been had, the Board takes the final steps of certifying the union shown to have been selected by a majority of those voting.

The representation proceeding concerning Hume's employee's together with those of the other members of the Association, having been set in motion, it remains a bar to new collective bargaining contracts containing exclusive recognition between Hume and any labor organization until the entire proceeding has run its course. It was therefore Hume's obligation under the Act to refuse to deal with any labor organization as the exclusive representative of its employees. The fact that Hume be-

lieved AFL to be the majority representative of the employees at the time of the execution of the March 25, 1946, contract is not sufficient. The question of the majority representation was before the Board and it was the Board's, and not Hume's function to resolve that question. By taking upon itself to determine the question of representation, Hume committed an unfair labor practice by lending prestige to AFL through the process of contracting with it while the employees were making their selection.

In its order of February 15, 1946, setting aside the elections, the Board had before it ample precedent for its pronouncement that, pending the holding of subsequent elections and a determination of their results, no new agreement of an exclusive bargaining character might be entered into by any of the employers involved in Matter of Bercut-Richards Packing Company, et al., with any union. This was no more than a statement of the established legal restrictions surrounding any employer and rival unions in similar circumstances.

In Matter of Elastic Stop Nut Corp., 51 N.L.R.B. 694, enf'd. 142 F. (2d) 371 (C.C.A. 8) cert. den. 323 U. S. 722, the Board entered an 8(2) cease and desist order largely bottomed on recognition of one of two contending unions under similar circumstances, and used the following language at page 702:

A neutral employer, when faced with the conflicting representation claims of two rival unions, would not negotiate a contract with one

of them until its right to be recognized as the collective bargaining representative had been finally determined under the procedures set up under the Act.

In *Matter of Phelps Dodge Corp. etc.*, 63 N.L.R.B. 686, the Board again enunciated the same principle and held discharges under a closed-shop contract—extended after maturity to hold over during representation proceedings—to be in violation of Section 8(3), saying at page 687:

We are of the opinion that if, during the pendency of an election directed by the Board to resolve a question concerning representation, an employer extends or renews an existing contract with a labor organization, or makes a new one, he violates the Act insofar as that organization is accorded recognition as exclusive bargaining representative or employees are required to become or remain members thereof as a condition of employment.

In the *Matter of Midwest Piping and Supply Co., Inc.*, 63 N.L.R.B. 1060, the respondent executed a union shop agreement with one of two contending unions while a representation petition filed by the other union was pending. The Board said at pages 1070-71:

The respondent knew, at the time that the contract was executed, that there existed a real question concerning the representation of the employees in question. The record shows that both the Steamfitters and the Steelworkers had

vigorously campaigned in the plant, had apprised the respondent of their conflicting majority representation claims, and had filed with the Board conflicting petitions, which are still pending, alleging the existence of a question concerning the representation of the employees covered by the agreement. Under such circumstances, the Congress has clothed the Board with the exclusive power to investigate and determine representatives for the purposes of collective bargaining. In the exercise of this power, the Board usually makes such determination, after a proper hearing and at a proper time, by permitting employees freely to select their bargaining representative by secret ballot. In this case, however, the respondent elected to disregard the orderly representative procedure set up by the Board under the Act, for which both unions had theretofore petitioned the Board, and to arrogate to itself the resolution of the representation dispute against the Steelworkers and in favor of the Steamfitters. In our opinion such conduct by the respondent contravenes the letter and the spirit of the Act, and leads to those very labor disputes affecting commerce which the Board's administrative procedure is designed to prevent.

We further find that the respondent's aforementioned conduct also constitutes a breach of its obligation of neutrality. As we have previously held, a neutral employer, on being confronted with conflicting representation claims

by two rival unions, "would not negotiate a contract with one of them until its right to be recognized as the collective bargaining representative had been finally determined under the procedure set up under the Act." Here, the respondent knew that the Board already had jurisdiction over the existing question concerning the representation of the employees covered by the contract, and that, in accordance with its usual practice, the Board would not proceed to a resolution of that question until it had passed upon the then pending original complaint herein, hearing on which had already been concluded. That no unfair labor practices are found herein on the original complaint does not alter the effect of the respondent's later breach of its neutrality obligation.

The same general rule is inherent in the Board's numerous decisions that such a contract entered into after representation proceedings have been instituted, is no bar. See *Radio Corporation of America*, 63 N.L.R.B. 235.<sup>29</sup>

It is also apparent that the March 25 contract sets up the employees of Hume as a separate appropriate bargaining unit despite the fact that the Board had already found that the employees of the

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<sup>29</sup>See also, *Matter of John Englehorn & Sons*, 42 N.L.R.B. 886, 875-876; *enf'd.* 134 F. (2d) 553, 556 (C.C.A. 3); *Matter of Southern Wood Preserving Co.*, 45 N.L.R.B. 230, 238, *enf'd.* 135 F. (2d) 606, 607 (C.C.A. 5); *Phelps Dodge Corp.*, *supra*.

members of the Association constituted the appropriate bargaining unit. In this respect too, the March 25 agreement must fall since it fails to comply with the requirements of the proviso in Section 8(3) of the Act. At the time of the hearing Hume was still a member of the Association.

By entering into the closed-shop contract of March 25, 1946, Hume created a condition of discrimination in regard to the hire and tenure and terms or conditions of employment of its employees, which had the coercive effect of encouraging membership in Local 22382 and discouraging membership in CIO. It is therefore found that the foregoing conduct of Hume was, in fact, a discrimination in regard to the hire and tenure and terms or conditions of employment of its employees because it compelled its employees to become and remain members of Local 22382, and, therefore interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

## 2. Execution Thereof Under Duress

In a prior section of this report, the subject of coercion and the exigencies of the business as a defense against conduct prohibited by the Act, has been dealt with. Here it is again raised with reference to the pressure exerted by AFL to compel the execution of the March 25, 1946, contract by Hume. The circumstances and the reasons that actually impelled the execution of the contract are both reflected in the following uncontradicted and

credible testimony of President Hume while under examination by respondents' counsel:

Q. Before March 1, 1946, were you given a demand by the union, that is, by the AFL union, that you sign up an exclusive bargaining contract with them, with closed shop provisions?

A. We were asked to, yes.

Q. Was that asking accompanied by any statement as to what would happen if you did not comply with that request?      A. It was intimated.

Q. That what?

A. That we would not be able to operate.

Q. In your opinion, had you not entered into the contract which you subsequently did, with that union, would your plant have been able to operate?

A. We know that it would not, because we did not enter into any agreement until the absolute deadline. The trucks were tied up, so therefore we were forced to enter into an agreement.

Q. The agreement that you entered into under those circumstances was made on what date?

A. March 25, 1946.

Q. Between March 1, 1946, and March 25, 1946, what occurred in connection with the operation of the plant or the stoppage of operation of the plant?

A. Trucks were not allowed to come in or out of the warehouse. We were not operating at the time. The picket was placed down by the warehouse, so that no trucks could come in or out.

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Q. Between March 1, 1946, and March 25, 1946, the bulk of the work on operations there would con-

sist of shipments going out of the plant from the warehouse?      A. That is correct.

Q. And those shipments of course are customarily hauled by truck, are they?

A. Partially rail, partially truck.

Q. Were any shipments during that period made out of the plant by way of rail?      A. Yes.

Q. Were any shipments during that period made out of the plant by way of trucks?      A. No.

Q. You say there was a picket line maintained during that period?      A. Correct.

Q. By whom?      A. The AFL.

Q. Did the Teamsters who were driving the trucks observe that picket line?      A. They did.

Q. None of them went through?      A. No.

Q. You knew that if the picket line was maintained, that no incoming trucks could haul produce into the plant, is that correct?

A. That is correct.

\*            \*            \*            \*            \*            \*            \*

Q. Did the company commence canning operations on March 25th and carry on continuously thereafter?      A. We did.

This testimony clearly indicates that the sole reason Hume entered into the contract of March 25, 1946, was to escape the penalties that were implicit in the threats of AFL, and not because AFL was the majority representative of the employees.<sup>30</sup>

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<sup>30</sup>President Hume admitted that he had no direct evidence that AFL represented the majority of the employees on March 25, 1946, but that he assumed that it represented them because "we had always been AFL."



In other words, Hume entered into the contract because it feared that by refusing to do so it would be visited with economic loss. As in the case of the discharges under like pressure, the choice selected was without the pale of the law. Between the penalties attached to a disregard of the obligation imposed by the Act to permit the Board, after it had assumed jurisdiction, to determine the question of representation, and the economic hardships that might develop from the threat of AFL to bar Hume from the receipt of merchandise, Hume elected to bow to the latter and accept the former. Hume therefore must be directed to reverse its position to conform to the requirements of the law. As the United States Circuit Court of Appeals for the Ninth Circuit carefully pointed out in *N.L.R.B. v. Star Publishing Co.*, 97 F. (2d) 465, "The Act prohibits unfair labor practices in all cases. It permits no immunity because the employer may think that exigencies of the moment require infraction of the statute. In fact, nothing in the statute permits or justifies its violation by an employer." This rule has also been followed in numerous other cases involving employers who have refused to obey the mandate of the Act because of pressure by one union which was party to a jurisdictional labor dispute. The statute "permits no immunity because of undue hardship or economic pressure imposed on the employer. It leaves no room for the appease-

ment of hostile interests . . .”<sup>31</sup> A contrary principle making enforcement of the provisions of the Act dependent upon considerations of the economic hardships imposed upon an employer would, as here, nullify the right of employees, guaranteed to them by the Act, to bargain through representatives of their own choosing. Representatives for the purpose of collective bargaining under such a principle would be determined by the degree of economic pressure rival unions or even one’s customers would be able to bring to bear upon an employer, rather than by the free choice of a majority of the employees.<sup>32</sup> Such a defense is without merit and as

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<sup>31</sup>See *McQuay-Norris Mfg. Co. v. N.L.R.B.*, 116 F. (2d) 748, 752 (C.C.A. 7), cert. den. 313 U. S. 565. See also *N.L.R.B. v. Isthmian Steamship Co.*, 126 F. (2d) 598, 599 (C.C.A. 2); *N.L.R.B. v. Hudson Motor Car Co.*, 128 F. (2d) 528, 532 (C.C.A. 6); *N.L.R.B. v. John Englehorn Sons*, 134 F. (2d) 553, 557 (C.C.A. 3); *South Atlantic Steamship Co. v. N.L.R.B.*, 116 F. (2d) 480, 481 (C.C.A. 5) cert. den. 313 U. S. 582; *N.L.R.B. v. Gluek Brewing Co., et al.*, 144 F. (2d) 847, 853 (C.C.A. 8); *Warehousemen’s Union v. N.L.R.B.*, 121 F. (2d) 84, 87 (App. D.C.) cert. den. 314 U. S. 674; *N.L.R.B. v. National Broadcasting Company, et al.*, 150 F. (2d) 895 (C.C.A. 2).

<sup>32</sup>In the Matter of *A. J. Showalter Company*, 64 N.L.R.B. No. 96, the Board held that the threat of a loss of business, sufficient even to cause the plant to be shut down, did not justify the president in telling his employees of the threat and the effect it might have on their jobs if they continued to remain members of a certain union. In the recent case of *Matter of Toledo Desk & Fixture Company*, 65 N.L.R.B. No. 193, the same principle was again announced when the employer urged that, to recognize the C.I.O. would deprive it of the right to use the A. F. of L. label and thereby render its products unsalable in their customary markets.

previously stated, it must be and it is found that the contract of March 25, 1946, was entered into under circumstances prohibited by the Act and that thereby Hume has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The undersigned further finds that Hume by (1) urging its employees to become and remain members in good standing in Local 22382, (2) granting, after March 1, 1946, to representatives of AFL access to its cannery while denying like privilege to representatives of CIO, and (3) requiring, as a condition of employment, the employees on the seniority list to obtain new clearance slips from Local 22382, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

#### IV. The Liability of the Association for the Unfair Labor Practices Committed by Hume

The complaint alleged that by virtue of the fact that the Association, among other things, advised its members relative to their respective labor policies and other matters incident thereto, including the negotiation and execution of collective bargaining contracts covering the employees of its members, the Association is an employer within the meaning of the Act. The joint answer of the respondents neither admitted nor denied these allegations although at the hearing, the Association concedes that it is an employer within the meaning of the Act. The Association cannot be charged *ipso facto*

with violating the Act, because one of its members may have committed an unfair labor practice without some showing of participation therein by the Association. The facts under Section III A and B show that Clough, a field representative of the Association, attended a meeting at the Hume cannery in August 1945, which was also attended by Hume's "regular" employees, several representatives of Local 22382, about 7 or 8 representatives of Teamsters, and by Gallardo, and Fordham representing Hume, and that Clough "asked" the assembled employees to clear through "the Teamsters' Organization in order to keep the plant operating in a peaceful manner so they could pack their peaches." According to the credible testimony of Heagle, Clough, in answer to a question put to him by Heagle, as to whether the "regular" employees "would be forced" to sign due check-off authorizations if they cleared as suggested, Clough replied in the negative. The record shows that none of the "regulars" signed any clearance slips in the Teamsters, in response to this request, but that they did execute new clearance slips in Local 22382 and the cannery continued in uninterrupted operation until November 19, 1945. Moreover, none of the "regulars" executed new check-off authorizations after they had executed the revocations in June 1945. It is a fact that those "regulars" who did not remain in good standing in Local 22382 were later discharged by Hume at the behest of that organization, but those discharges were not the result of any unfair labor practices of the Association. Clough's

official status with the Association was not developed at the hearing beyond the statement by counsel for the Association that he was an "employee" and the statement of Birchall that, so far as he knew, Clough was a "field representative." Such statements, uncontraverted, are insufficient to attach to the Association responsibility for whatever Clough may have done at the August 1945 meeting when the peach canning season was being threatened by the demands of AFL that went beyond the terms of the Master Agreement. Moreover, assuming that Clough had authority to bind the Association, Clough's statements on that occasion must be read in the atmosphere of the occasion. He did not threaten anyone, but he did appeal to the employees for cooperation and, in explaining that no check-off of dues would be involved, pointed out, in effect, that clearing through Teamsters would be no more than a gesture. That Clough nor the Association entertained an idea of compelling such action is clearly shown by the telephone conversation of early November 1945, between President Hume, with a representative of Local 22382 present at Hume's end, wherein Clough advised Hume not to discharge any employee on the seniority list because he was not in good standing with Local 22382. The undersigned is convinced, and finds, that the evidence is insufficient to base a finding that the Association violated the Act by the acts and statements of Clough, as described above, nor does the evidence show that the Association participated in the unfair labor practice committed by Hume. Accordingly,

the undersigned will recommend that the allegations of the complaint with respect to the Association be dismissed.

## V.    The Effect of the Unfair Labor Practices       Upon Commerce

The activities of Hume set forth in Section III above, occurring in connection with the operations of Hume described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and such of them as have been found to be unfair labor practices tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## VI.   The Remedy

Having found that Hume has engaged in unfair labor practices, the undersigned will recommend that it cease and desist therefrom and take the following affirmative action which it is found will effectuate the policies of the Act.

Since it has been found that Hume discriminated in regard to the hire and tenure of employment of the 18 persons whose names appear on Appendix B, hereto annexed, by discharging them and thereafter refusing to reemploy some of them,<sup>33</sup> because they,

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<sup>33</sup>The record is not clear how many "regular" employees have been rehired since November 20, 1945.

and each of them, had failed and refused to remain members in good standing in Local 22382, the undersigned will recommend that the respondent offer to each of them who has not been heretofore reinstated immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges.

Since it has been found that Hume discriminated in regard to the hire and tenure of employment of Clarence McVay, a seasonal employee, the undersigned will recommend that Hume offer him immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay he may have suffered by reason of such discrimination, by payment to him of a sum of money equal to the amount he normally would have earned as wages during the period from December 7, 1945, the date of his discharge, to the date of Hume's offer of reinstatement to him, less his net earnings<sup>34</sup> during said

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<sup>34</sup>By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company*, 8 N.L.R.B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N.L.R.B.*, 311 U. S. 7.

period. However, since Hume's business is seasonal, it is possible that the cannery may not be in operation at the time said offer of reinstatement is made; in that event the offer of reinstatement of McVay shall become effective at such time as Hume's seasonal business next begins. Moreover, since McVay is a seasonal employee, the undersigned will not recommend back pay for the period in which he normally would not have worked in Hume's cannery, nor will the undersigned recommend the deduction as earnings of any monies earned elsewhere by him during such period.

Since it has been found that Clemie Robinson, Monroe Robinson, Thomas L. Broll, Ruth Waite, Agnes Hopkins, Myrtle Brown, Genevieve Alsup, Marguerite Watts, Clifford C. Luther and R. E. Rearick (the persons whose names appear on Appendix C, hereto annexed) are seasonal employees and had been reinstated by Hume prior to the hearing herein, the undersigned will recommend that Hume make them whole for any loss of pay they may have suffered by reason of Hume's discrimination against him, by payment to each of them a sum of money equal to the amount he or she normally would have earned as wages during the period from November 21, 1945, the date of their discharges, to the date when each of them was reinstated by Hume, less his or her net earnings during such period. Since Hume's business is seasonal in nature and since the persons named in this paragraph are seasonal employees, the undersigned will not recommend back pay for the periods in which



they normally would not have worked in Hume's cannery, nor will the undersigned recommend the deductions as earnings of any monies earned elsewhere by them during such periods.

At the time of the hearing Oscar Johnson, a "regular" employee, was in the military forces of the United States and is accordingly not available for immediate reinstatement. Therefore, the undersigned will recommend that Hume, upon application by Johnson within ninety (90) days after his discharge from the armed forces of the United States, offer him reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges. The undersigned will further recommend that Hume make Johnson whole for any loss of earnings he may have suffered by reason of Hume's discrimination against him, by payment to him of a sum of money equal to the amount he normally would have earned as wages during the period: (1) between November 20, 1945, the date of his discharge, and the date of his entry in the armed forces of the United States and (2) between the date five (5) days after Johnson's timely application for reinstatement by Hume and the actual offer of reinstatement, less his net earnings during these periods.

Since it has been found that A. E. Berry, Ernest G. Bishop, Vider Bjorcklund, Jasper J. Bobb, Harold Dillard, William J. Ely, Clyde Faddis, H. F. Frazier, Harlie Frischneckt, Irwin C. Heagle, T. Boyd McKamey, Archie Miller, A. E. Moore, Harry E. Pierson, Abe Thiessen, Neal Watts, and R. B.

White (the persons whose names appear on Appendix B, hereto annexed), are "regular" employees and were also discriminatorily discharged by Hume, and that an undetermined number of them have been reinstated by Hume, the undersigned will recommend that Hume make each of them whole for any loss of pay he may have suffered by reason of Hume's discrimination, by payment to each of a sum of money equal to the amount he normally would have earned as wages during the period from the date of the respective discharges to the date when each of them was reinstated by Hume, or shall hereinafter be offered reinstatement, less his net earnings during such period.

It has been found that by reason of the demands of AFL for changes in the Master Agreement, made prior to March 1, 1946, that contract expired by its own terms on March 1, 1946, and that the contract of March 25, 1946, was intended by the parties thereto to be a contract of indefinite duration, to incorporate all the terms of the Master Agreement, and to be a new over-all agreement embodying the terms of the March 25, 1946, contract plus the provisions of the Master Agreement. Since it has been found that the March 25, 1946, contract constituted an unfair labor practice on the part of Hume, the undersigned will recommend that Hume be ordered to cease and desist from giving effect to said contract and such other contracts, understandings, supplements, extensions, or other agreements as may have been related thereto, provided, however, in so doing, Hume shall not be required or permitted to

vary those provisions of such contracts, understandings, supplements, extensions or other agreements which establish wages, hours of employment, rates of pay, seniority, or other substantial rights of its employees, until such time as a new contract is entered into with an exclusive collective bargaining representative of its employees duly certified as such representative by the Board.

In acceding to AFL's demand for the discharge of the 29 persons whose names appear on Appendices B and C, hereto annexed, Hume violated Section 8 (3) of the Act. Normally in cases in which an employer has unlawfully discriminated against an employee by discharging him, in addition to affirmative relief, the Board orders the employer to cease and desist from in any manner infringing upon the rights guaranteed in Section 7 of the Act. In the instant case, however, Hume discharged the 29 persons not to satisfy any purpose of its own but, rather, yielded to the pressure of AFL who refused to allow the cannery to operate because the said 29 persons were not in good standing with Local 22382. Under such circumstances, and in view of the absence of any evidence that danger of other unfair labor practices is to be anticipated from Hume's conduct in the past, the undersigned will not recommend that Hume be enjoined from the commission of any and all unfair labor practices. Nevertheless, the undersigned will recommend that Hume be ordered to cease and desist from the unfair labor practice herein found.<sup>35</sup>

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<sup>35</sup>See Matter of American Car and Foundry Company, 66 N.L.R.B. No. 129.

Since it has been found that the evidence does not support the allegations of the complaint that the Association committed unfair labor practices, the undersigned will recommend that the allegations of the complaint with respect to the Association be dismissed.

Since John M. Smith did not appear at the hearing and no evidence was introduced with respect to his status, the undersigned will recommend that the allegations of the complaint with respect to John M. Smith be dismissed without prejudice.

On the basis of the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following:

### CONCLUSIONS OF LAW

1. Food, Tobacco, Agricultural and Allied Workers Union of America, affiliated with the Congress of Industrial Organizations, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, affiliated with the American Federation of Labor, California State Council of Cannery Workers, affiliated with the American Federation of Labor, and Cannery Workers Union, Local 22382, affiliated with the American Federation of Labor, are labor organizations within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of the 29 persons whose names appear on Appendices B and C, hereto annexed, thereby encouraging membership in certain affli-

ates of the American Federation of Labor and discouraging membership in Food, Tobacco, Agricultural and Allied Workers of America, affiliated with the Congress of Industrial Organizations, and other labor organizations, Hume has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

3. By interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, Hume has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

4. By discriminating in regard to the hire and tenure and terms or conditions of employment of its employees, through the medium of the illegal contract of March 25, 1946, with Cannery Workers Union, Local 22382, and California State Council of Cannery Workers, both affiliated with the American Federation of Labor, to encourage membership in that organization and discourage membership in Food, Tobacco, Agricultural and Allied Workers Union of America, affiliated with the Congress of Industrial Organizations, Hume has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

6. California Processors and Growers, Inc., did not violate the Act as alleged in the complaint.

## RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, the undersigned recommends that the respondent, G. W. Hume Company, Turlock, California, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Recognizing the Cannery Workers Union, Local 22382, and California State Council of Cannery Workers, both organizations being affiliated with the American Federation of Labor, as the exclusive representatives of its employees for the purposes of collective bargaining unless and until said organizations, or either of them, shall be certified by the National Labor Relations Board as the exclusive representative of such employees;

(b) Giving effect to its contract dated March 25, 1946, with California State Council of Cannery Workers and Cannery Workers Union, Local 22382, both organizations being affiliated with American Federation of Labor, or to any extension, renewal, modification or supplement thereto, or to any superseding contract with those labor organizations, or any other labor organization or affiliate thereof, provided, however, in so doing, Hume shall not be required or permitted to vary those provisions of such contracts, understandings, supplements, extensions, or other agreements which establishes wages, hours of employment, rates of pay, seniority, or other substantial rights of its employees unless and until said

organizations, or either of them, shall be certified by the National Labor Relations Board as the representatives of Hume's employees;

(c) Discouraging membership in Food, Tobacco, Agricultural and Allied Workers Union of America, affiliated with the Congress of Industrial Organizations, or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment or any term or condition of employment;

(d) Encouraging membership in Federal Labor Union Local 22382, or any other labor organization, by yielding to pressure from that organization, or other pressure, through discharge or refusal to reinstate any employee or through any other form of discrimination in regard to hire or tenure of employment or any term or condition of employment.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Offer to the persons whose names appear on Appendices B and C, hereto annexed, immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges in the manner set forth in "The remedy";

(b) Make whole in the manner set forth in "The remedy" the persons whose names appear on Appendices B and C, hereto annexed, for any loss they may have suffered;

(c) Withdraw and withhold all recognition from California State Council of Cannery Workers and Cannery Workers Union, Local 22382, both organizations being affiliated with the American Federation of Labor, as the exclusive representatives of its employees for the purposes of collective bargaining with respect to the rates of pay, wages, hours of employment and other conditions of employment unless and until said organizations, or either of them, shall have been certified by the National Labor Relations Board as the representatives of such employees;

(d) Post at its Turlock, California, cannery copies of the notice attached hereto and marked Appendix D. Copies of the notice to be furnished by the Regional Director for the Twentieth Region, after being duly signed by the Hume representatives, shall be posted by Hume immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Hume to insure that said notices are not altered, defaced or covered by any other material;

(e) File with the Regional Director for the Twentieth Region, on or before ten (10) days from the date of the receipt of this Intermediate Report, a report in writing setting forth in detail the manner and form in which Hume has complied with the foregoing recommendations.

It is further recommended that unless Hume notifies said Regional Director in writing within ten



(10) days from the receipt of this Intermediate Report that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring Hume to take the action aforesaid.

It is further recommended that the complaint with respect to the California Processors and Growers, Inc., be dismissed.

It is further recommended that the complaint with respect to the discharge of John M. Smith be dismissed without prejudice.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, as amended, effective November 27, 1945, any party or counsel for the Board may, within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and four copies of a statement in writing, setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he replies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue

orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board. Any party desiring to submit a brief in support of the Intermediate Report shall do so within fifteen (15) days from the date of the entry of the order transferring the case to the Board, by filing with the Board an original and four copies thereof, and by immediately serving a copy thereof upon each of the other parties and the Regional Director.

/s/ HOWARD MYERS,  
Trial Examiner.

Dated: May 20, 1946.

### Appendix A

A. E. Berry	Abe Thiessen
Ernest G. Bishop	Neal Watts
Vider Bjorklund	R. B. White
Jasper J. Bobb	Clemie Robinson
Harold Dillard	Monroe Robinson
Wm. J. Ely	Thomas L. Broll
Clyde Faddis	Clarence McVay
H. F. Frazier	Ruth Waite
Harlie Frischknecht	Agnes Hopkins
Irwin C. Heagle	Myrtle Brown
Oscar Johnson	Genevieve Alsup
T. Boyd McKamey	Marguerite Watts
Archie Miller	Clifford C. Luther
A. E. Moore	R. E. Rearick
Harry E. Pierson	John M. Smith

## Appendix B

A. E. Berry	Irwin C. Heagle
Ernest G. Bishop	Oscar Johnson
Vider Bjorklund	T. Boyd McKamey
Jasper J. Bobb	Archie Miller
Harold Dillard	A. E. Moore
Wm. J. Ely	Harry E. Pierson
Clyde Faddis	Abe Thiessen
H. F. Frazier	Neal Watts
Harlie Frischknecht	R. B. White

## Appendix C

Clemie Robinson	Myrtle Brown
Monroe Robinson	Genevieve Alsup
Thomas L. Broll	Marguerite Watts
Clarence McVay	Clifford C. Luther
Ruth Waite	R. E. Rearick
Agnes Hopkins	

## Appendix D

## Notice to All Employees

## Pursuant to

the Recommendations of a Trial Examiner

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Offer to Clarence McVay and Oscar Johnson immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and priv-

ileges enjoyed, and make them whole for any loss of pay suffered as a result of the discrimination.

We Will Offer to those of the employees named below who have not been reinstated already, immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges enjoyed, and make each of the following whole for any loss of pay suffered as a result of the discrimination.

A. E. Berry	Irwin C. Heagle
Ernest G. Bishop	T. Boyd McKamey
Vider Bjorklund	Archie Miller
Jasper J. Bobb	A. E. Moore
Harold Dillard	Harry E. Pierson
Wm. J. Ely	Abe Thiessen
Clyde Faddis	Neal Watts
H. F. Frazier	R. B. White
Harlie Frischknecht	

We Will make whole the following for any loss of pay suffered as a result of our discrimination against them.

Clemie Robinson	Myrtle Brown
Monroe Robinson	Genevieve Alsup
Thomas L. Broll	Marguerite Watts
Ruth Waite	Clifford C. Luther
Agnes Hopkins	R. E. Rearick

We Will Not encourage membership in Cannery Workers Union, Local 22382, or in any other labor organization, by yielding to pressure from that or any other labor organization, or other pressure,

through discharges or refusal to reinstate any employee or through any other form of discrimination in regard to hire or tenure of employment or any term or condition of employment.

All our employees are free to become or remain members of Food, Tobacco, Agricultural & Allied Workers Union of America, CIO, or any other labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

G. W. HUME COMPANY  
(Employer)

By .....  
(Representative) (Title)

Dated.....

Note: Any of the above-named employees presently serving in the Armed Forces of the United States will be offered full reinstatement upon application in accordance with the Selective Service Act after discharge from the Armed Forces.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

In the United States Circuit Court of Appeals  
For the Ninth Circuit

No. 11693

NATIONAL LABOR RELATIONS BOARD,  
Petitioner,

vs.

G. W. HUME COMPANY and CALIFORNIA  
PROCESSORS & GROWERS, INC.  
Respondent.

PETITION FOR ENFORCEMENT OF AN  
ORDER OF THE NATIONAL LABOR RE-  
LATIONS BOARD

To the Honorable, the Judges of the United States  
Circuit Court of Appeals for the Ninth Cir-  
cuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, c. 372, 29 U.S.C. § 151 et seq.), respectfully petitions this Court for the enforcement of its order against respondent, G. W. Hume Company, Turlock, California, its officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of G. W. Hume Company and California Processors & Growers, Inc. and Food, Tobacco, Agricultural & Allied Workers Union of America, C. I. O. and International Brotherhood of Teamsters, Chauffeurs, Warehouse-

men and Helpers of America, A. F. of L., and California State Council of Cannery Unions, A. F. of L., Parties to the Contract, Case No. 20-C-1391”.

In support of this petition, the Board respectfully shows:

(1) Respondent is a California corporation, engaged in business in the State of California, within this judicial circuit, where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, the Board on October 31, 1946, duly issued an order directed to the respondent, its officers, agents, successors, and assigns. So much of the aforesaid order as relates to this proceeding provides as follows:

#### Order

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, G. W. Hume Company, Turlock, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Recognizing Cannery Workers Union, Local 22382, A. F. of L., and California State

Council of Cannery Unions, A. F. of L., as the exclusive representative of its employees for the purpose of collective bargaining, unless and until said organization or organizations shall have been certified by the National Labor Relations Board as the exclusive representatives of such employees;

(b) Giving effect to its contract dated March 25, 1946, with California State Council of Cannery Unions, A. F. of L., and Cannery Workers Union, Local 22382, A. F. of L., or to any extension, renewal, modification, or supplement thereof, or to any superseding contract with those labor organizations, or any other labor organization or affiliate thereof, unless and until said organization or organizations shall have been certified by the National Labor Relations Board as the exclusive representatives of its employees;

(c) Discharging membership in Food, Tobacco, Agricultural and Allied Workers Union of America, C. I. O., or encouraging or discouraging membership in any labor organization of its employees, by discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of their employment;

(d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Food, Tobacco, Agricultural and Allied Workers Union of America, C. I. O., or any other labor organization, to



bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Clarence McVay and to the employees whose names appear in Appendix B of the Intermediate Report, attached hereto immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges, in the manner set forth in Section VI of the Intermediate Report, entitled "The Remedy";

(b) Make whole the employees whose names appear in Appendices B and C of the Intermediate Report for any loss of pay they may have suffered by reason of the respondent's discrimination against them, in the manner set forth in the aforementioned Remedy Section of the Intermediate Report;

(c) Withdraw and withhold all recognition from California State Council of Cannery Unions, A. F. of L., and Cannery Workers Union, Local 22382, A. F. of L., as the exclusive representative of its employees for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment, unless and until said organization or organizations shall have been certified by the National

Labor Relations Board as the representatives of such employees;

(d) Post at its cannery at Turlock, California, copies of the notice attached hereto, marked "Appendix A."<sup>6</sup> Copies of the notice, to be furnished by the Regional Director for the Twentieth Regions, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by its for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

(e) Notify the Regional Director for the Twentieth Region, in writing within ten (10) days from the date of this Order, what steps the respondent Hume has taken to comply herewith.

(3) On October 31, 1946, the Board's Decision and Order was served upon respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to respondent's counsel.

(4) Pursuant to Section 10 (c) of the National Labor Relations Act, the Board is certifying and filing with this Court a transcript of the entire record in the proceeding before the Board, includ-

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<sup>6</sup>In the event that this order is enforced by a decree of a Circuit Court of Appeals, there shall be inserted in the notice, before the words: "A Decision and Order," the words: "A Decree of the United States Circuit Court of Appeals Enforcing."

ing the pleadings, testimony and evidence, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceeding set forth in the transcript and upon so much of the order made thereupon as set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board, and requiring respondent, its officers, agents, successors, and assigns to comply therewith. The Board further prays that this Honorable Court, in enforcing said order, shall provide that the aforementioned notice to be posted by respondent, marked "Appendix A", shall specifically recite that the Board's order has been enforced by a decree of this Court so that the introductory clause of the notice shall read as follows: "Appendix A, Notice to All Employees, Pursuant to a Decree of the United States Circuit Court of Appeals, enforcing a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:"

NATIONAL LABOR

RELATIONS BOARD,

/s/ A. NORMAN SOMERS,

Assistant General Counsel.

Dated at Washington, D. C., this 18th day of July 1947.

## Appendix A

## Notice to All Employees

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Offer to those of the employees named below who have not been reinstated, immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make each of the following whole for any loss of pay suffered as a result of the discrimination.

A. E. Berry	Oscar Johnson
Ernest G. Bishop	T. Boyd McKamey
Vider Bjorklund	Clarence McVay
Jasper J. Bobb	Archie Miller
Harold Dillard	A. E. Moore
Wm. J. Ely	Harry E. Pierson
Clyde Faddis	Abe Thiessen
H. F. Frazier	Neal Watts
Harlie Frischknecht	R. B. White
Irwin C. Heagle	

We Will make whole the following named employees for any loss of pay suffered as a result of our discrimination against them.

Clemie Robinson	Myrtle Brown
Monroe Robinson	Genevieve Alsup
Thomas L. Broll	Marguerite Watts
Ruth Waite	Clifford C. Luther
Agnes Hopkins	R. E. Rearick

We Will Not recognize the Cannery Workers Union, Local 22382, A. F. of L., and California States Council of Cannery Unions, A. F. of L., as the exclusive representatives of our employees for the purpose of collective bargaining, unless and until said organization or organizations shall have been certified by the National Labor Relations Board as the exclusive representatives of our employees;

We Will Not give effect to our contract dated March 25, 1946, with California State Council of Cannery Unions, A. F. of L., and Cannery Workers Union, Local 22382, A. F. of L., or to any superseding contract with those labor organizations or any other labor organization or affiliate thereof, unless and until said organization or organizations shall have been certified by the National Labor Relations Board as the exclusive representatives of our employees.

We Will Not discourage membership in Food, Tobacco, Agricultural and Allied Workers Union of America, C. I. O., or encourage or discourage membership in any other labor organization of our employees, by discharging or refusing to reinstate any of our employees, or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of employment.

We Will Not in any like or related manner interfere with, restrain, or coerce our employees in

the exercise of the right to self-organization, to form labor organizations, to join or assist Food, Tobacco, Agricultural and Allied Workers Union of America, C. I. O., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act. All our employees are free to become or remain members of Food, Tobacco, Agricultural and Allied Workers Union of America, C. I. O., or any other labor organization. We will not discriminate in regard to the hire or tenure of employment or any term or condition of employment of any employee because of his membership in or activity on behalf of any such labor organization.

G. W. HUME COMPANY,  
Employer.

Note: Any of the above-named employees presently serving in the armed forces of the United States will be offered full reinstatement upon application in accordance with the Selective Service Act after discharge from the armed forces.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

## Appendix B

A. E. Berry	Irwin C. Heagle
Ernest G. Bishop	Oscar Johnson
Vider Bjorklund	T. Boyd McKamey
Jasper J. Bobb	Archie Miller
Harold Dillard	A. E. Moore
Wm. J. Ely	Harry E. Pierson
Clyde Faddis	Abe Thiessen
H. F. Frazier	Neal Watts
Harlie Frischknecht	R. B. White

## Appendix C

Clemie Robinson	Myrtle Brown
Monroe Robinson	Genevieve Alsup
Thomas L. Broll	Marguerite Watts
Clarence McVay	Clifford C. Luther
Ruth Waite	R. E. Rearick
Agnes Hopkins	

## District of Columbia—ss.

A. Norman Somers, being first duly sworn, states that he is Assistant General Counsel of the National Labor Relations Board, Petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing petition and has knowledge of the contents thereof; and that the statements made

therein are true to the best of his knowledge, information and belief.

/s/ A. NORMAN SOMERS,  
Assistant General Counsel.

Subscribed and sworn to before me this 18th day of July 1947.

[Seal]      /s/ KATHRYN B. HARRELL,  
Notary Public, District of  
Columbia.

My Commission Expires February 29, 1952.

[Endorsed]: Filed July 23, 1947.

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[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS RELIED UPON  
BY THE BOARD

The Board submits the following statement of points upon which it intends to rely in the above-entitled proceeding:

I.

The Board's findings of fact that respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8 (1) and (3) of the National Labor Relations Act are supported by substantial evidence.

II.

The Board's order is valid under the Act.

/s/ A. NORMAN SOMERS,  
Assistant General Counsel, National Labor Relations  
Board.

Dated at Washington, D. C., this 18th day of July, 1947.



CCA No. 11693

Notice of Filing Petition of N.L.R.B. for  
Enforcement of Its Order

United States of America—ss.

The President of the United States of America:

To: G. W. Hume & California Processors & Growers, Inc., Turlock, Calif., Food, Tobacco, Agricultural & Allied Workers of America, CIO, 150 Golden Gate Avenue, San Francisco, Calif., and International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Calif. Council of Cannery Unions, Att.: Mr. Mathew O. Tobriner, 1035 Russ Bldg., San Francisco, Calif.,

Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10(e)), you and each of you are hereby notified that on the 23rd day of July, 1947, a petition of the National Labor Relations Board for enforcement of its order entered on October 31, 1946, in a proceeding known upon the records of the said Board as "In the Matter of G. W. Hume Company and California Processors & Growers, Inc., and Food, Tobacco, Agricultural & Allied Workers Union of America, C.I.O., and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F.

of L., and California State Council of Cannery Unions, A. F. of L., Case No. 20-C-1391," and for entry of a decree by the United States Circuit Court of Appeals for the Ninth Circuit, was filed in the said United States Circuit Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Circuit Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Fred M. Vinson, Chief Justice of the United States, this 23rd day of July, in the year of our Lord one thousand nine hundred and forty-seven.

[Seal]      /s/ PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

Return on Service of Writ

United States of America,  
Northern District of California—ss.

I hereby certify and return that I served the annexed Order for enforcement of order of the National Labor Relations Board on the therein-named G. W. Hume & California Processors and Growers, Inc., Turlock, California, by handing to and leaving a true and correct copy thereof with R. G. Hume, President of G. W. Hume & California Processors and Growers, Inc., personally at Turlock, California, in said District on the 30th day of July, 1947.

GEORGE VICE,  
U. S. Marshal.

By /s/ WESLEY EIRCH,  
Deputy.

## Return on Service of Writ

United States of America,

Northern District of California—ss.

I hereby certify and return that I served the annexed Petition on the therein-named Food, Tobacco, Agricultural & Allied Workers Union of America, C.I.O., by handing to and leaving a true and correct copy thereof with Mrs. Roberta Montgomery as International Representative of the Food, Tobacco, Agricultural & Allied Workers Union of America, C.I.O., personally at Oakland, California, in said District on the 30th day of July, A.D. 1947.

GEORGE VICE,

U. S. Marshal.

By /s/ HERBERT R. COLE,  
Deputy.

## Return on Service of Writ

United States of America,  
Northern District of California—ss.

I hereby certify and return that I served the annexed Petition on the therein-named International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Calif. Council of Cannery Unions, by handing to and leaving a true and correct copy thereof with Mathew O. Tobriner, Attorney, personally at San Francisco, Calif., in said District on the 28th day of July, 1947.

GEORGE VICE,  
U. S. Marshal.

By /s/ HERBERT R. COLE,  
Deputy.

## Marshal's Fee:

Travel .....	\$ .20
Service .....	2.00
	<hr/>
	\$2.20

[Endorsed]: Filed Aug. 5, 1947.

[Title of Circuit Court of Appeals and Cause.]

ANSWER TO PETITION OF NATIONAL LABOR RELATIONS BOARD FOR ENFORCEMENT OF ITS ORDER

In answer to the petition of National Labor Relations Board, hereinafter referred to as the Board, for the enforcement of its order dated October 31, 1946, respondents G. W. Hume Company and California Processors & Growers, Inc., admit, deny and allege as follows:

I.

Respondents admit that they are California corporations, engaged in business in the State of California, within this judicial circuit.

II.

Respondents admit that the Board made its order on October 31, 1946, a portion of which is set forth in its petition.

III.

The order of the Board of October 31, 1946, and the conclusions of law upon which it is based, are not supported by any findings of fact or any fact or facts contained in the record and are contrary to law.

IV.

The petition of the Board herein should be denied by this Court for the reason that to grant it

would be to deny to the employees of respondent G. W. Hume Company the rights guaranteed to them by the National Labor Relations Act and would lead to and create labor disputes obstructing the free flow of commerce.

Wherefore respondents pray that said petition be dismissed.

Dated August 8, 1947.

/s/ PAUL ST. SURE,

/s/ EDWARD H. MOORE,

/s/ JAMES R. AGEE,

Attorneys for Respondents.

Receipt of a true copy of the foregoing Answer is hereby acknowledged this 8th day of August, 1947.

/s/ LEWIS S. PENFIELD,

Regional Attorney, National  
Labor Relations Board.

TOBRINER & LAZARUS.

By /s/ ALBERT BRUNDAGE,

8/8/47.

[Endorsed]: Filed Aug. 8, 1947.

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[Title of Circuit Court of Appeals and Cause.]

PETITION FOR LEAVE TO INTERVENE

To: The Honorable United States Circuit Court  
of Appeals for the Ninth Circuit:

The petition of International Brotherhood of  
Teamsters, Chauffeurs, Warehousemen and Helpers

of America, A.F.L., and California State Council of Cannery Unions, A.F.L., respectfully shows that:

### I.

A petition for enforcement of an order of the National Labor Relations Board (hereinafter referred to as the Board) against respondent herein has heretofore been filed with the above Court by said Board, and the Clerk has heretofore issued a rule to show cause why said petition should not be granted.

### II.

The substance of said petition is that respondent is recognizing these petitioners as the exclusive representatives of the employees of respondent in its Turlock, California, plant for the purposes of collective bargaining; that respondent entered into a contract with these petitioners dated March 25, 1946, and is giving effect to said contract, and that respondent discharged certain employees pursuant to the agreement of March 25, 1946. Said petition prays enforcement of an order directing respondent to cease and desist from so recognizing petitioners herein and from giving effect to said contract dated March 25, 1946, or giving effect to any extension, renewal, modification or supplement thereof or to any superseding contract with these petitioners unless or until said petitioners have been certified by the Board as the representatives of the employees in its Turlock, California, plant. Said petition fur-



ther prays enforcement of an order directing petitioners to reinstate to their former positions and make whole certain named persons.

### III.

These petitioners, as parties to said collective bargaining contract hereinabove referred to and as possible parties to future contracts, have a direct and substantial interest in the matters alleged in said petition and sought to be presented to the above-entitled Court. Petitioners herein have a direct and substantial interest in the successful defense of the party named as respondent in the above-entitled proceeding and in the protection of the above-mentioned contract from the attempted destruction by said Board.

### IV.

A copy of the Complaint in Intervention which these petitioners ask leave to file is attached hereto and marked Exhibit "A."

Wherefore, your petitioners ask leave to intervene in this proceeding against the Board, petitioner therein, and that they be granted leave to file the proposed Complaint in Intervention, and for such other and further relief as to the Court may seem proper.

Dated this 6th day of August, 1947.

TOBRINER & LAZARUS.

By /s/ MATHEW O. TOBRINER,

Attorneys for Petitioners.

[Endorsed]: Filed Aug. 7, 1947.

[Title of Circuit Court of Appeals and Cause.]

### ORDER ALLOWING INTERVENTION

Upon reading the Petition for Leave to Intervene submitted by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A.F.L., and California State Council of Cannery Unions, A.F.L., and good cause appearing therefor,

It Is Hereby Ordered that said petitioners be allowed to intervene in the above-entitled matter and that they be allowed to file and serve their Complaint in Intervention.

Done and Ordered at San Francisco, California, this 7th day of August, 1947.

For the Court:

/s/ FRANCIS K. GARRECHT,  
United States Circuit Judge.

[Endorsed]: Filed Aug. 7, 1947.

In the United States Circuit Court of Appeals  
for the Ninth Circuit

No. 11693

NATIONAL LABOR RELATIONS BOARD,  
Petitioner,

vs.

G. W. HUME COMPANY and CALIFORNIA  
PROCESSORS & GROWERS, INC.,

Respondent.

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMER-  
ICA, A. F. OF L., and CALIFORNIA STATE  
COUNCIL OF CANNERY UNIONS, A. F.  
OF L.,

Plaintiffs in Intervention,

vs.

NATIONAL LABOR RELATIONS BOARD,  
Defendant in Intervention.

### COMPLAINT IN INTERVENTION

Come now plaintiffs in intervention, after leave of this Court first had and obtained, and file this, their Complaint in Intervention, and for cause of action allege:

#### I.

Plaintiffs in Intervention, hereinafter referred to as A.F.L., did, as found by the National Labor

Relations Board (Intermediate Report, p. 3, l. 53) enter into a collective bargaining contract providing for wages, hours and conditions of employment, with respondent in 1941 and did renew said contract on or about March 25, 1946. Said contract of 1941, and said renewal, provided for employment of members of A.F.L. exclusively; said contract and said renewal were so-called union-shop contracts.

## II.

From said date of 1941 and to March 25, 1946, and at all times thereafter to and including the present time, A.F.L. is and has been the lawful representative of the employees of respondent for the purposes of collective bargaining. At the time of the execution of said contract in 1941 no other union or labor organization of any kind other than A.F.L. claimed the right to represent any of the employees of respondent in its Turlock, California, plant. On March 25, 1946, when said contract was renewed, A.F.L. represented the majority of the employees at the Turlock, California, plant of respondent and A.F.L. so informed respondent.

## III.

Despite the existence of said lawful contracts, and despite the fact that AFL was the lawful representative of said employees as aforesaid, the National Labor Relations Board (hereinafter called the Board) heretofore, in the summer of 1945, accepted petitions for investigation and certification of representatives filed by the Food, Tobacco, Ag-

ricultural and Allied Workers of America, C.I.O., and, from July 3, 1945, to September 11, 1945, proceeded to hold various hearings thereon. Despite the fact that A.F.L. contended that the contracts dated from 1941 as aforesaid constituted a bar to the proceedings, the Board, on October 12, 1945, issued its Decision, Direction of Elections and Order providing that an election be held. Said Board held such contract was not a bar but did, in so doing, recognize said contract was a valid and existing contract which should be respected until its expiration date. Said Board ruling provided:

“\* \* \* any certifications of representatives which may issue as a result of the elections hereinafter directed shall be solely for the purpose of designating a bargaining representative to negotiate a new agreement to become effective upon the expiration of the existing contract.”

Pursuant to said Direction, on October 17, 1945, said Board conducted an election among the employees at the Turlock, California, plant of respondent.

By reason of the fact that said Board failed to give the proper notice of said election, permitted employees other than qualified voters to participate in said election, failed to exact the usual safeguards for the conduct of said election, and conducted said election at the end of the season when many employees were absent, A.F.L. protested said election and, on February 15, 1946, the Board ordered that said election be set aside and ruled that it was void and of no effect.

## IV.

After said Order of February 15, 1946, A.F.L., in reliance upon its status as exclusive bargaining representative of the employees of said respondent, on or about March 25, 1946, demanded and secured from the respondent an extension and renewal of said collective bargaining contracts heretofore entered into and existing as aforesaid. At the time of the execution of said extension and renewal of contracts, A.F.L. was, and now is, the lawful and legal representative of said respondent's employees covered by said contract. If A.F.L. had not demanded and secured said contracts, as aforesaid, said employees would have been without representation of any kind and unable to bargain collectively with their employer. Since said Decision and Order of October 12, 1945, and to the present time, a period of almost two years, the Board has failed to determine and certify any other bargaining agency of said employees, and, unless A.F.L. is allowed to continue to enforce its contract with said respondent and to secure further contracts if need be, said employees will be without representation and the process of collective bargaining will be foreclosed.

## V.

The contention of the Board that the filing and pendency of a petition for certification halts the process of collective bargaining and forecloses a continuation of the relationship between the employer and the Union necessarily results in a hiatus

in said process. In the instant action, said hiatus has now continued for almost two years and still continues. Nothing contained in the National Labor Relations Act provides that the filing of a petition for certification thus forecloses collective bargaining and affords to a recalcitrant employer the opportunity to evade or destroy the collective bargaining obligation. Notwithstanding the provisions of the National Labor Relations Act, and notwithstanding the practical debacle effected upon the bargaining process by its misinterpretation of the National Labor Relations Act, the Board would prevent A.F.L. from continuing the existing relationship and would divest the A.F.L. of its contractual rights. The Board would thereby work a retroactive destruction of collective bargaining for the past two years and a prospective foreclosure thereof for an indefinite term in the future.

As and for a Second, Further, Separate and Independent Cause of Action in Intervention, plaintiffs in intervention allege:

### I.

Plaintiffs in intervention, hereinafter referred to as A.F.L., hereby refer to all of the allegations of paragraphs I, II, III and IV of the First Cause of Action and by said reference hereby incorporate said allegations herein as though set forth in full.

### II.

In the event that a filing of a petition for certification prevents the continuation of collective bar-

gaining and the bargaining relationship between the existing bargaining agency and the employer, collective bargaining will be subjected to a constant series of interruptions as well as to the incitement of strikes and stoppages of work contrary to the provisions and intent of the National Labor Relations Act. In the event that such construction of the Act were correct, an employer would be freed completely of the obligation of collective bargaining by the filing of a petition by a rival union. Such an interpretation would encourage and incite inter-union rivalry and the filing of petitions and counter-petitions by competing unions. In the instant case, such a ruling has so incited an attempt by Food, Tobacco, Agricultural and Allied Workers of America, C.I.O., to destroy the collective bargaining contracts and relationships of A.F.L. in the canning industry.

### III.

The ruling of the Board that the existing relationship is destroyed by the filing of a petition for certification subjects the canning industry of California, in particular, to dissension and discord in perpetuity. During the past six years A.F.L. and respondent have entered into collective bargaining negotiations and consummated collective bargaining agreements prior to March of each year. Due to the pressure of high production during the season, it is impossible at that time to work out a collective bargaining contract, and it has therefore been the practice and custom of the industry to consummate such



contract prior to the height of the canning season. In the event that a petition for certification could arrest such process until an election were held and the Board certified a collective bargaining agency, the industry would be subjected to endless dissension. A rival union could file a petition at any time during the year; an election could only be held during the summer months when the canneries were all operating; certification could be delayed by objections and investigations by the Board and, as a consequence, no bargaining agency would be permitted to function during the actual canning season. The filing of such petitions could be repeated year after year and collective bargaining in the industry virtually eliminated. Such prohibition of collective bargaining in the canning industry over the years, with the consequence of disordered industrial relations and labor unrest, would seriously jeopardize one of California's principal industries. Notwithstanding the frustration of collective bargaining hereinabove described, and notwithstanding the violation of the purpose and provisions of the National Labor Relations Act thereby effected, the Board has attempted herein to enforce an order bringing about these very results.

As and for a Third, Further, Separate and Independent Cause of Action in Intervention, Plaintiffs in Intervention allege:

I.

Plaintiffs in Intervention, hereinafter referred to as A.F.L., hereby incorporate all of the alle-

gations of paragraphs I, II, III and IV, of the First Cause of Action, by reference herein as though said allegations were herein set forth in full.

## II.

The National Labor Relations Board, hereinafter referred to as the Board, has heretofore ruled that an employer and labor organization act at their peril in consummating an agreement with knowledge of the pendency of certification proceedings before the Board. Thereby said Board has ruled that an employer and labor organization which conclude a contract during the period in which a petition for certification by a rival organization is being considered by the Board do so at their peril and, in the event the rival organization makes an ultimate showing of majority representation, said contract is subject to defeasance.

## III.

Following the first election on October 17, 1945, in the above-entitled matter, which said election was set aside on February 15, 1946, as hereinabove set forth in Paragraph III of the First Cause of Action, said Board held a second and further election among the members of the California Processors & Growers, Inc., including the plant of respondent at Turlock, California, on August 30, 1946. In said election A.F.L. received 16,262 votes, and F.T.A.-C.I.O. 14,896. Said election thereby established that A.F.L. represented a majority of the employees of the Cali-

ifornia Processors & Growers, Inc. Pursuant to the rule heretofore set down by the Board that the parties enter into an interim collective bargaining agreement at their peril, which agreement is subject to defeasance if the organization does not represent a majority of the employees, but subject to confirmation in the event that the labor organization does represent such a majority, the agreement herein involved was affirmed by said second election and, according to the rule of the Board, is valid. Notwithstanding the subsequent validation of said agreement by said election, said Board does now unlawfully attempt to invalidate said agreement.

As and for a Fourth, Further, Separate and Independent Cause of Action in Intervention, Plaintiffs in Intervention allege:

### I.

Plaintiffs in Intervention, hereinafter referred to as A.F.L., hereby refer to all of the allegations of paragraphs I, II, III and IV of the First Cause of Action, and by said reference hereby incorporate said allegations herein as though set forth in full.

### II.

The Order which the Board seeks to enforce herein provides that respondent cease and desist from recognizing A.F.L. or giving effect to its contract unless and until said organization shall have been certified by the Board as the representative of the employees in its Turlock, California, plant.

## III.

Following the first election on October 17, 1945, in the above-entitled matter, which said election was set aside on February 15, 1946, as hereinabove set forth in paragraph III of the First Cause of Action, said Board held a second and further election among the members of the California Processors & Growers, Inc., including the plant of respondent on August 29 and 30, 1946. The matter of the certification of the Union receiving the majority of the votes cast in said election is still pending before the National Labor Relations Board. The Board should render such certification within a reasonably short time. Such certification should certainly be forthcoming prior to the next canning season. The pendency of said proceedings renders the determination of the status of the involved contract academic and moot. The involved contract would in any event operate only to the date of certification. Subsequent to certification, the involved contract would be void and of no effect in the event that a union other than A.F.L. were to be certified. The proceedings of the Board herein to determine the status of the involved contract prior to the certification now pending before it is an unnecessary expenditure of the time of this Honorable Court. Notwithstanding this fact, the Board has invoked the process of this Honorable Court to render a decision which, as hereinabove set forth, cannot affect any live and existing legal issue by and between the parties and would therefore be moot and academic.

Wherefore, A.F.L. prays that the petition for enforcement of an Order of the National Labor Relations Board in the above-entitled cause be dismissed.

Dated this 6th day of August, 1947.

TOBRINER & LAZARUS.

By /s/ MATHEW O. TOBRINER,

1035 Russ Building, San Francisco 4, Calif., Attorneys for Intervenors.

State of California,  
City and County of San Francisco—ss.

Mathew O. Tobriner, being first duly sworn, deposes and says:

That he is one of the attorneys for intervenors herein; that he has read the foregoing Complaint in Intervention and knows the contents thereof; that the same is true of his own knowledge except as to those matters therein alleged on information and belief, and as to those matters that he believes it to be true; that he makes this verification on behalf of intervenors for the reason that there is no officer of intervenors in the City and County of San Francisco authorized to verify said Complaint.

/s/ MATHEW O. TOBRINER.

Subscribed and sworn to before me this 6th day of August, 1947.

[Seal]      /s/ ALFRED D. MARTIN,  
Notary Public in and for the City and County of  
San Francisco, State of California.

[Endorsed]: Filed Aug. 7, 1947.

Before the National Labor Relations  
Board, Twentieth Region

Case No. 20-C-1391

In the Matter of

G. W. HUME COMPANY and CALIFORNIA  
PROCESSORS & GROWERS, INC.,

and

FOOD, TOBACCO, AGRICULTURAL & ALLIED  
WORKERS UNION OF AMERICA, C.I.O.,

and

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMER-  
ICA, A. F. OF L., and CALIFORNIA STATE  
COUNCIL OF CANNERY UNIONS, A. F.  
OF L.,

Parties to the Contract.

Pursuant to notice, the above-entitled matter  
came on for hearing at 10:00 a.m.

Before: Howard Myers, Esq.,

Trial Examiner.

Appearances:

John Paul Jennings, Esq., San Francisco, Cali-  
fornia, appearing on behalf of the National Labor  
Relations Board.

. Gladstein, Andersen, Resner, Sawyer & Edises, by  
Bertram Edises, Esq., appearing on behalf of Food,  
Tobacco, Agricultural & Allied Workers Union of  
America, CIO.

Paul St. Sure, Esq., Financial Center Building, Oakland, California, appearing on behalf of California Processors & Growers, Inc., and G. W. Hume Company.

James R. Agee, Esq., Financial Center Building, Oakland, California, appearing on behalf of California Processors & Growers, Inc., and G. W. Hume Company.

Tobriner & Lazarus, by Mathew O. Tobriner, Esq., 1035 Russ Building, San Francisco, California, appearing on behalf of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. of L., and California State Council of Cannery Unions, A. F. of L., Parties to the contract. [2\*]

## PROCEEDINGS

Trial Examiner Myers: Are you ready to proceed, gentlemen?

I would like to announce that this is a formal hearing before the National Labor Relations Board in the matter of G. W. Hume Company and California Processors & Growers, Inc., and Food, Tobacco, Agricultural & Allied Workers Union of America, CIO, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and California State Council of Cannery Unions, AFL, Parties to the Contract, being Case No. 20-C-1391.

The Trial Examiner appearing for the National Labor Relations Board is Howard Myers.

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\* Page numbering appearing at top of page of original Reporter's Transcript.

Will counsel or representatives of the parties please state their appearances for the record?

Mr. Jennings: John Paul Jennings for the National Labor Relations Board.

Mr. Edises: Bertram Edises, of the firm of Gladstein, Andersen, Resner, Sawyer & Edises, for FTA-CIO.

Mr. St. Sure: Paul St. Sure and James R. Agee for the California Processors and Growers and the G. W. Hume Company.

Mr. Tobriner: Tobriner & Lazarus by Mathew O. Tobriner, for the AFL.

Trial Examiner Myers: Does anybody else want their appearances noted on the record? [4]

(No response.)

Trial Examiner Myers: I would like to announce further that the official reporter makes the only official transcript of the proceedings. Citations in briefs or arguments based upon the record, directed to the Trial Examiner or to the Board, must cite the official transcript in all references to the record. The Board will not certify any transcript other than the official transcript for use in any court litigation.

It may become necessary to make corrections in the record during the hearing. If so, the party desiring the correction will submit the suggested correction to the other party or parties in writing. When this has received their written approval, it will be submitted to the Trial Examiner. In the event the parties are unable to agree upon proposed



corrections, the Trial Examiner will then consider motions to correct the record or may, upon his own motion, order certain corrections made. If the parties have been unable to agree upon such corrections before the close of the hearing but have entered into a stipulation concerning such matters after the close of the hearing but before the transfer of the case to the Board, such stipulations or motions should be addressed to the Trial Examiner in care of the Chief Trial Examiner in Washington. After the transfer of the case to the Board, all such communications should be directed to the Board itself.

Concise statements of reasons for motions or objections will be permitted, but the Trial Examiner may go "off the record" for the purpose of hearing extended argument. "Off the record" discussion or argument will not be included in the official transcript unless an order to that effect be made by the Trial Examiner, either upon the request of any of the parties or upon his own motion. All requests to go off the record are to be directed to the Trial Examiner and not to the official reporter.

The Trial Examiner will allow an automatic exception to all adverse rulings, and upon appropriate order an objection and exception will be permitted to stand to an entire line of questioning.

Five copies of all pleadings submitted during the hearing are to be filed with the Trial Examiner. All exhibits offered in evidence shall be in duplicate.

At the close of the hearing, the Trial Examiner will expect counsel to argue orally, during which argument the Trial Examiner will feel free to dis-

cuss with and ask questions of the counsel with respect to their contentions as to the issues of facts and the legal principles involved.

The oral argument will be part of the stenographic report of the hearing. Any party shall be entitled, upon request made before the close of the hearing, to file a brief with the Trial Examiner, within five days of the close of the hearing. [6] Five copies of such briefs shall be directed to the Trial Examiner in care of the Chief Trial Examiner in Washington.

During the course of the hearing, the Trial Examiner will undoubtedly ask questions of the various witnesses. The Trial Examiner wants counsel to feel free to object to any of his questions, if they think the questions are improper, in the same manner, and with the same freedom, as if the questions were propounded by counsel.

The parties might think that five days to file a brief after the close of the hearing is not sufficient time, because they might not get the record within the five days. I would like to announce that if any of the parties are considering filing briefs with me, they should discuss the matter of expediting the delivery of the record with the official reporter.

You may proceed, Mr. Jennings.

Mr. Jennings: Mr. Examiner, at this time I should like to offer in evidence the original documents in this proceeding, and ask that they be given the following designations:

The original of the Fourth Amended Charge, Board's Exhibit 1 (a); the original Complaint,

Board's Exhibit 1 (b); the original of the Notice of Hearing, Board's Exhibit 1 (c) and the Affidavit of Service of Notice of Hearing and Complaint, Board's Exhibit 1 (d).

As Board's Exhibit 1 (e), the original of the Answer of the G. W. Hume Company and California Processors & Growers, Inc.

As Board's Exhibit 1 (f), the original of the Answer filed by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and California State Council of Cannery Unions, AFL.

As Board's Exhibit 1 (g), the original of the Motion to Dismiss filed by the organizations last referred to.

Trial Examiner Myers: Do you offer those papers in evidence?

Mr. Jennings: Yes, I am offering them at this time.

Trial Examiner Myers: Is there any objection, gentlemen?

Mr. St. Sure: We have no objection.

Mr. Edises: No objection.

Mr. Tobriner: No objection.

Trial Examiner Myers: There being no objection, the papers will be received in evidence. I will ask the Reporter to please mark them 1 (a) through 1 (g) respectively.

(The documents referred to were marked Board's Exhibits Nos. 1 (a) through 1 (g) and were received in evidence.)

Mr. Jennings: Mr. Examiner, I might call your attention to two things in connection with the documents filed by Mr. Tobriner on behalf of the Teamsters Union. There is no motion to intervene as yet filed by that organization, and I have [8] something to say when that motion to intervene is made.

Trial Examiner Myers: You mean the motion by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers to intervene?

Mr. Jennings: That is correct, Mr. Examiner.

Mr. Tobriner: They are parties to the dispute, as I understand it. They are certainly named in the caption, Mr. Jennings.

Mr. Jennings: I may as well say at this time, as I have told Mr. Tobriner, that they are in the case for a limited purpose. I would object to their participating fully in the case, other than as their interests may appear.

Mr. Tobriner: May I be heard on that matter?

Trial Examiner Myers: We will cross that bridge when we get to it, Mr. Tobriner.

Mr. Tobriner: That is a rather novel position for counsel for the Board to take. I want the record to show that this is the first instance we have had of that novelty. Although we have had novel occasions in which the Board counsel has taken unusual positions, this is the most unusual.

Mr. Jennings: We have discussed this matter previously, Mr. Examiner. I think we understand each other's position.

Trial Examiner Myers: You mean you have discussed it with counsel before?

Mr. Jennings: Yes. [9]

Mr. Tobriner: Just a minute. Let the record show I never heard any such statement by counsel, that we were in the case only for a limited purpose and that we had to file a motion to intervene.

Mr. Jennings: In any event, my position was and still is that I think the Teamsters are here for a limited purpose only.

Trial Examiner Myers: That is your position?

Mr. Jennings: Yes, and I am prepared to argue it when the occasion arises.

Trial Examiner Myers: If any occasion arises when you think they are going beyond what you think is a limited purpose, I will hear counsel at that time.

Mr. Jennings: Thank you.

There is also a motion to dismiss which has been filed by the Teamsters Union, and that is in the files now.

Trial Examiner Myers: Before I hear the motion to dismiss, are there any motions addressed to the pleadings outside the motion to dismiss which was filed by the International Brotherhood of Teamsters and the California State Council?

(No response.)

Trial Examiner Myers: Do you want to be heard now on your motion, Mr. Tobriner?

Mr. Tobriner: Yes, I would like to be, Mr. Examiner, if I may. [10]

Trial Examiner Myers: Wait until I read the motion.

Mr. Tobriner: Yes.

Trial Examiner Myers: Now you may proceed, Mr. Tobriner.

Mr. Tobriner: The motion to dismiss filed by the parties to the contract, as stated in the caption, which we will call for brevity the "AFL", rests upon three separate and independent grounds, each of which, we think, is sufficient to sustain a motion. They are alternative grounds.

The first ground relies upon the fact that the complaint on file, in Paragraph IX, Page 7, alleges as follows:

"At the time said contract was executed, the Respondents knew that the question of representation of their employees was still pending and unresolved before the Board, and the Respondents knew further that the Board in its said Supplemental Decision of February 15, 1946, had expressly provided that while the question of representation was unresolved, and pending a new election, the Respondents could not grant exclusive recognition either to the F.T.A.-C.I.O. or to the A. F. of L."

Assuming for the purposes of argument, and assuming, as the complaint states, that the Board provided or ruled that a contract could not be entered into between the AFL and the employers—an assumption which I do not think is founded on fact, but still making that assumption—if that [11] were a fact, the proper tribunal and the proper agency for the relief requested by the Board here would be

the U. S. Circuit Court of Appeals for the Ninth Circuit. If an order has been made by the Board, and that order has been violated, according to the Board's position, then the matter is one of enforcement only, and there is no purpose and no function to be performed by a hearing before a Trial Examiner. The proper tribunal would be the Circuit Court of Appeals.

So much for the first ground. That assumes that an order was made by the National Labor Relations Board.

Returning to the second ground: We do not think any such order was made. The National Labor Relations Board in its opinion on February 15, 1946, carried certain language. The only order made at that time—and inspection of the Supplemental Decision would show that, and I shall read it to you—was to void and nullify the election.

I hold in my hand the Supplemental Decision and Order which is part of the Board's records, being entitled "Berent-Richards Packing Company and Cannery and Food Process Workers Council of the Pacific Coast and its affiliated Unions: Food, Tobacco, Agricultural and Allied Workers Union of America, CIO", Case No. 20-R-1414, et al.

I read the Order in that case:

"It Is Hereby Ordered that the elections held from October 11 to December 20, 1945, inclusive, among the [12] employees of members of C. P. & G. and among the employees of the Independent Companies be, and they hereby are, vacated and set aside".

That is the sole Order. That is the sole Decree. There is nothing in this decision beyond that Order, so far as an Order is concerned. There is language in the Decision. That language is dicta; the language is advisory. It attempts to set forth what the rights and obligations and duties of the parties are, apart from the setting aside of the election.

If it is to be claimed that some of the language in here is to be construed as an order, then we move to dismiss, upon the ground that we never were heard upon the subject matter of the alleged order. That subject matter pertains to the right to enter into a collective bargaining contract subsequent to March 1, 1946. No hearing was ever called upon that subject matter, no notices to the parties was ever given that the subject matter would be considered, no charges, no complaints were ever filed with respect to it. We never were heard upon that subject matter.

So, if an order has been made ordering that no contract could be entered into after March 1, 1946, we have not been heard. Due process has not been afforded to us, and if the Board, *ex parte* and *ex cathedra*, without following due process, has made any such order or ruling, then we are here to say that this proceeding should not go ahead, because we have not been heard.

We say if the Board is to take the position that it has made an order on this matter *ex parte*, that the Board has attempted to prejudge this case without hearing the parties.



Trial Examiner Myers: Where do you get the statement that the Board has entered an order?

Mr. Tobriner: It says as I read it in the first instance, in the complaint, Paragraph IX, Page 7, reading as follows:—

In fact, I would submit, Mr. Trial Examiner, that this proceeding is based upon that contention.

Trial Examiner Myers: Yes. Go ahead.

Mr. Jennings: It states: “provided”, Mr. Examiner. It does not say “ordered” or “directed”.

Mr. Tobriner: Let us read it.

“At the time said contract was—”

Trial Examiner Myers: What you meant in the complaint, as I get it, was that it be “should not grant exclusive” instead of “could not”.

Mr. Tobriner: It goes beyond that, Mr. Trial Examiner, I think.

Mr. Jennings: I intend to offer the Board’s Order in evidence, Mr. Examiner.

Mr. Tobriner: At the top of Page 7, Mr. Examiner, it says, “At the time said contract was executed—” [14]

Mr. Jennings: The Board’s direction of elections and the Supplemental Decision probably are matters of which the Board could take judicial notice, but we intend to offer both of those documents.

Mr. Tobriner: We will insist upon it.

Trial Examiner Myers: Go ahead, Mr. Tobriner.

Mr. Tobriner: On page 7 of the Complaint it says:

“At the time said contract was executed, the Respondents knew that the question of repre-

sensation of their employees was still pending and unresolved before the Board, and the Respondents knew further that the Board in its Supplemental Decision of February 15, 1946, had expressly provided that while the question of representation was unresolved, and pending a new election, the Respondents could not grant exclusive recognition either to the F.T.A.-C.I.O. or to the A. F. of L."

Certainly the purport and the intention of that language, by the use of the word "provided" is "decided," "ruled" or "ordered." Otherwise it makes no sense. In other words, we are accused, because we have entered into a contract with the employer, of violating the Supplemental Decision of February 15th, and on that basis this case is proceeding. If that is the case, we have not been heard.

As a third and final ground for our motion to dismiss, we think that the interpretation of the Supplemental Decision upon which the Board hinges its case here is incorrect. The Regional Office has construed that section of the opinion as a proviso or an order, and we think that that does not accord with the law. We submit the Board lacked jurisdiction to make any such ruling. They recognize that the collective bargaining agency for this industry and for the employees employed in it, for nine years has been the AFL. All of the cases hold that the AFL continues to act as a bargaining agency in that industry unless and until a

new collective bargaining agency has been certified to take its place. No such certification has ever taken place. No other bargaining agency has ever legally been substituted for the AFL. Until such time, we submit we have the full right, obligation and power to enter into a contract with the employers, and the employers correspondingly have the obligation and duty to contract with us.

So, on that third ground we likewise submit our motion to dismiss.

Trial Examiner Myers: Does anybody else want to be heard, either on behalf of or against the motion?

Mr. Jennings: So that you may intelligently consider it, Mr. Examiner, I should like at this time to offer in evidence the documents which I referred to. [16]

As Board's Exhibit 2, the Decision and Direction of Election of October 12, 1945.

Trial Examiner Myers: We will have it marked first. Board's Exhibit 2.

(Thereupon, the document above referred to was marked Board's Exhibit No. 2 for identification.)

Mr. Jennings: As Board's Exhibit 3, the Supplemental Decision and Order of February 15, 1946. I have additional copies, if anyone desires them.

(Thereupon, the document above referred to was marked Board's Exhibit No. 3 for identification.)

Trial Examiner Myers: Does anybody want to be heard in favor of the motion?

Mr. Jennings: I should like to say this, Mr. Examiner, and state briefly the Board's position.

Trial Examiner Myers: You are going to oppose the motion?

Mr. Jennings: Yes.

Trial Examiner Myers: Does anybody else want to be heard in favor of it?

Mr. St. Sure: I would like to be heard, not in favor of the Union's motion particularly, but the Answer that has been filed on behalf of the employers in this case asks for a dismissal of the Complaint which is on file herein.

The position of the employers in some degree parallels that of the Union in its motion to dismiss, in that it is our view that the Board's proceeding in this particular situation is apparently based upon the theory that the National Labor Relations Board, in its order setting aside the election, likewise established rules for operation of the canneries and the bargaining unit and the collective bargaining representatives of the employees. Indeed, as Mr. Tobriner has pointed out, the complaint on file goes so far as to charge that the parties, including the respondent Companies, knew that the Board had expressly provided that the relationship that we had had over a period of many years should in effect be discontinued. That is a rough paraphrase of the language.

Certainly the specific language which Mr. Tobriner has quoted does point up the theory not only of the Regional Board on the filing of this com-

plaint with the National Board, but the National Board's own declarations through the press and otherwise, that they have in some fashion made an order which is binding upon the parties with relation to the bargaining rights, pending an election.

Not only do we believe that that position is unsound and erroneous and contrary to law, but we believe, in addition to that, the statement of Mr. Herzog, the Board Chairman, officially speaking for the Labor Board, expressly refutes that theory.

Trial Examiner Myers: Where is that?

Mr. St. Sure: On the 25th of February.

Trial Examiner Myers: I mean, is it stated in the Supplemental Decision of the Board?

Mr. St. Sure: No. It is stated in a letter which Mr. Herzog, as Chairman of the Board, wrote to Congressman Anderson in response to a letter of Mr. Anderson. I would like to refer briefly to that exchange of letters.

On the 25th of February, Congressman Anderson addressed a letter to Mr. Herzog, which I shall read in part:

“The Board's decision of February 18th, setting aside last October's election which was held to establish an exclusive bargaining agent for the cannery workers in California, reads in part as follows:

“ ‘The employers may not, pending this (a new election) give preferential treatment to any of the labor organizations involved, although they may recognize each one as the representative of its members.’ ”

Congressman Anderson requested that the Board consider the effect of that language and modify it. On the 27th of February, Mr. Herzog replied to Congressman Anderson upon the letterhead of the National Labor Relations Board, and signed the letter "Paul M. Herzog, Chairman."

I will have a photostat available of the original, if there is any question about its authenticity.

In that letter to Congressman Anderson, Mr. Herzog had the following to say:

"I hasten to reply to your letter of February 25 with reference to the difficult situation faced by the California cannery industry. My colleagues and I realize that, unless those unions were willing to exercise self-restraint, some of these problems might arise as a result of our recent decision setting aside the October elections. I am sure, however, that you would not have wanted the Board to reach any decision other than that which a majority of us thought was required as a matter of good conscience under the law.

"The language in the opinion to which you allude was simply a declaration of the law as we see it and as the Courts have interpreted it. It is true that the Board could not and did not order the employers to take or refrain from taking any particular action in this representation case in the same sense that it would have had power to do so in an unfair labor practice proceeding. We nevertheless considered it our duty to call the parties' attention to their rights

and obligations under the law, so that they might govern their conduct accordingly between now and the time a new election can be conducted. It would certainly have been less fair to say nothing on the subject, and then to take action against the employers later, if they engage in the conduct which we believe would be unlawful. It certainly will not be the Board's fault if either or both labor organizations see fit to try to force the employers into a situation which may require them, in order to save their crops, to disregard their obligations under the National Labor Relations Act.

"You may, therefore, wish, perhaps with other members of the California Delegation, to call upon either or both of the competing labor organizations"—and so on.

The balance of the letter has to do with the request the Congressman made for some action.

As I read that letter, and as the canners, the employers read that letter, Mr. Herzog, as Chairman of the Board, has spelled out what we believe the fact to be, that the Board, in this so-called "Supplemental Decision and Order" setting aside the election, did no more than express its opinion, what it thought the law might be in the event the proper proceedings were had and the Courts followed the judgment of the Board.

Without commenting on the rather amazing statement of Chairman Herzog that it would not be the Board's fault if the labor unions pressure

the employer into doing this or that thing, we certainly have the view and feel that we are obligated under the law to act upon the situation and the conditions as we find them, and not upon the Board's expressed advice in a given situation, before such time as the Board's theory of the law and its interpretation can be tried out and a proper hearing had. [21]

Again the letter goes on to say, in connection with another matter, the matter of the right of the employers to deal at a particular time:

"We do not see how we can modify the recent decision as you suggest, so as to expressly authorize the C. P. & G. to renew the old contract with the AFL in its present form. It should be remembered that a closed shop agreement is only valid under Section 8(3) of the Act if it is made with a labor organization which represents a majority of the employees when made . . ."

The "when made" is underlined, and was underlined by Mr. Herzog. That is a quotation from the Act itself, but the underlining is Mr. Herzog's underlining.

". . . One could hardly say that the A. F. of L. Union surely does represent such a majority as of March 1946, in view of the continued pendency of the Board's election case and, indeed, of the results of the very election that was set aside."



It seems to us again that Mr. Herzog there is interpreting the Act as he sees it, underlining the expression "when made," and certainly the employer has not only the right but the obligation, in following the terms of the Act itself, to take into account the language which Mr. Herzog refers to, and, as the Board itself suggests, it might be difficult to say as of the date that elections were held in the canneries and elections subsequently set aside, that the AFL had a majority at that time. Certainly it ill behooved the Board to say that as of any other time the employer is not either expected to or required to determine under the Act, and to act in accordance with his determination that a majority may exist as to one labor organization or another.

In other words, we feel that until and unless there has been a hearing and a determination by way of a change in collective bargaining representatives, that we are not only not violating the law in continuing our relationship with the AFL, but indeed, that we would be violating the law if we failed to continue that condition and that situation.

Under all of the circumstances—this is rather an informal method of presenting a motion to dismiss—but, we do feel that the Board has been, shall we say, "playing labor politics" at the expense of the employers, of the agriculturists of this State, in this proceeding, and that we are now faced with further pressure and union politics in connection with the Board's action.

We have endeavored, as this record will disclose, in the event that this complaint is heard, to do one thing, to operate canneries in the State of California.

So far as the Board's action is concerned, it has apparently endeavored to maintain a theoretical right-of-way without regard, we contend, either to the rights of the workers who are involved here or the employers who are under the obligation to their workers and to the growers of this State to do a job of processing food.

I do not propose to make any further speeches along this line, but I do want the Trial Examiner to have in mind the position sincerely taken by the employers in this case, and I do not intend to endeavor to try our position on the basis of speech making. But, because this matter has such a far reaching effect upon not only the labor relationships in the canning industry, but upon the food supply of this country, our view is that the entire background ought to be on the table as a part of the record, and before the Trial Examiner at this stage of the proceeding.

We do urge that the complaint be dismissed upon the ground that there is no basis for the charge which the Board has received and which it makes against the employers in this situation. Indeed, on the contrary, the action of the employers which the Board is attempting to prove is illegal, as a matter of fact is the only legal thing which the employers could do under the National Labor Relations Act.

Mr. Jennings: I have only this to say, Mr. Ex-

aminer. We are actually arguing the merits of the case on the motion to dismiss. In fact, I think that is what we were doing. I would prefer to argue the merits when the evidence is in.

Mr. St. Sure: May I ask this question, Mr. Trial Examiner? [24]

If Mr. Jennings takes the position that we are arguing the merits on this motion to dismiss, I assume that he then concedes that the Board's theory is that there is a violation of an order which told us that we could not bargain.

Mr. Jennings: I am ready to state my position now.

Mr. St. Sure: Pardon?

Mr. Jennings: I think the position of the Board is accurately stated in the letter of the Chairman of the Board which Mr. St. Sure read. It was not an order. Obviously the decision of the Board in the representation case is not an order within the meaning of the Act, because an order is entered only in an unfair labor practice proceeding, such as the present. The theory of the complaint is that what the employers did was a violation of the Act. That is what is before your Honor for decision.

Trial Examiner Myers: Does anybody else want to be heard?

Mr. Edises: Yes, I would like to say a word, Mr. Examiner.

The motions made by the Teamsters and by the California Processors and Growers carefully single out a portion of Paragraph IX of the complaint, and carefully overlook the real heart and substance

of that section. Paragraph IX states that on or about a certain date, while a question of representation was still pending and unresolved before the Board, the respondents executed an agreement with the AFL, recognizing the AFL as the exclusive representative of its employees at the Turlock plant, and requiring, as a condition of employment, membership in the AFL, and that since that date the respondent has enforced and given effect to the contract.

It further states, "At the time said contract was executed, the Respondents knew that the question of representation of their employees was still pending and unresolved before the Board . . ."

That is, in my opinion, the basis of the cause of action here, the fact that there was a pending question of representation before the Board, that an election had been held which showed that most of the workers in the California canneries wanted the F.T.A.-C.I.O. as their collective bargaining representative, that in spite of that evidence, with knowledge of it, the employers went ahead and made the exclusive bargaining and closed shop contract which is the subject of complaint here.

Section 9 further goes on and states that in addition the Board expressly provided in its decision that the making of such a contract would be illegal. That language can be regarded as sheer surplusage for purposes of this case. All that it does is point up the factor of knowledge on the part of the employers, which would indeed be presumed from the fact of their participation in the representation

case, and from the fact of their having been duly furnished with the Board's various decisions in that case.

The point is further made by the Teamsters' representative that this action was entirely legal for the reason that the AFL, as he puts it, had been the bargaining representative for nine years. This is an interesting statement, which can hardly be explored effectively in this state of the record and in the absence of proof.

I want to assure the Examiner that the proof will show what common experience bears out, that the "AFL," so-called, is not one single entity or even one harmonious coalition of operating unions. The fact of the matter is that the AFL is a series of different unions, many of whom, I believe, have been known to engage in jurisdictional disputes.

The record will show in this case that the Teamsters Union were strangers to this whole situation until the middle of the year 1945, and that the previous collective bargaining representative had not been the Teamsters at all, but had been a "Federal Local," so-called, of the American Federation of Labor.

So, even if there were such a thing as a presumption of continuing representation or majority, it could not possibly have any application in the present case. [27]

Thank you.

Mr. Tobriner: Mr. Trial Examiner, if I may have a brief moment to answer and to comment upon some of the interesting observations made.

Mr. Edises has stated now that the language in the complaint on page 7 is to the effect that the Board in its Supplemental Decision of February 14, 1946, "had expressly provided," et cetera, is surplusage. Indeed, the attorney for the Board has said on the record that no order was issued in the Supplemental Decision despite the language employed in the complaint.

So far as I know the law—and I think that there are myriads of cases to prove it—when surplusage is complained of in the complaint, it should go out. I do not think there is much question about that, Mr. Trial Examiner. We do not want to proceed in this case on language that we think means something and which counsel says does not mean, according to our lights, what we think it means. He says "provided" does not mean "ruled." I think the dictionary will not bear out his contention, and certainly the language will not bear out his contention. But, in any event F.T.A. counsel has said it is surplusage, and the Board has not said it was not surplusage. So, I think we are entitled to move to strike.

I will challenge counsel to find any case in the books of California or any other of the 47 states in which it is not always recognized that surplusage in a complaint is subject to a motion to strike. Otherwise we will proceed here on two different dual theories, because we will have to try to protect ourselves against the complaint as we read it and as the Judge would look at it.

Trial Examiner Myers: Mr. Edises said that those words were surplusage in the Supplemental Decision of the Board. He did not say they were surplusage in the complaint.

Mr. Jennings: I can say, as far as the Board is concerned, we consider that the language quoted in the complaint is not surplusage. I would say this: I think, without the existence of the facts alleged in that portion of the complaint, a violation would exist merely by reason of the fact that a contract was signed during the pendency of the representation case.

Trial Examiner Myers: You mean that it is your contention that even if the Board did not make those statements in its decision, the entering into of the contract——

Mr. Jennings: Would still be a violation. That is correct, Mr. Examiner.

Mr. Tobriner: I understood Mr. Edises to say that this language was surplusage. In fact he read this language, Mr. Trial Examiner.

Mr. Edises: May I repeat what I said?

Trial Examiner Myers: Just repeat what you said. [29]

Mr. Edises: I simply want to straighten out Mr. Tobriner, who apparently has the faculty of selective deduction.

Trial Examiner Myers: Now, wait a minute.

Mr. Tobriner: If Mr. Edises is going to correct that statement, may I ask that he not throw any bombs over this way. Let us get the record straight.

Mr. Edises: I left my bombs in the anteroom, Mr. Examiner.

Trial Examiner Myers: Go ahead.

Mr. Edises: What I said was that this particular language was not necessary to a statement of a cause of action, that the provisions which were overlooked and ignored in effect by counsel for the moving parties in and of themselves stated a cause of action.

Mr. Tobriner: Mr. Trial Examiner, simply to clear that up, in our Code it says that surplusage consists of unnecessary allegations.

So, I think my statement on the record was correct. However, Board counsel does not agreed with F.T.A. counsel, evidently. Board counsel merely wants to change the meaning of the word "provided". I think that should be amended on its face, then, so we would know what we are talking about.

Trial Examiner Myers: Have you a motion to amend?

Mr. Jennings: No, Mr. Examiner. I am satisfied.

May I ask whether Board's Exhibits 2 and 3 have been received in evidence?

Trial Examiner Myers: Is there any objection to these papers going into evidence?

Mr. Tobriner: No objection.

Mr. Jennings: May it be stipulated by all counsel that their clients received copies of those documents?

Mr. Edises: So stipulated.

Mr. Tobriner: So stipulated.



Mr. St. Sure: Yes.

Trial Examiner Myers: Do you so stipulated, Mr. Tobriner?

Mr. Tobriner: Yes.

Trial Examiner Myers: And you, Mr. Edises?

Mr. Edises: So stipulated.

Mr. Jennings: That is from the Board in Washington, and on or about the date the decisions were issued, is that correct?

Mr. St. Sure: That is correct.

Mr. Edises: That is correct.

Mr. Tobriner: So stipulated.

Trial Examiner Myers: Is there any objection to these papers going into evidence, that is, Board's Exhibits and 3 for identification? [31]

(No response.)

Trial Examiner Myers: Hearing no objection, the papers are received in evidence, and I will ask the Reporter to please mark them Board's Exhibits 2 and 3 respectively.

(The documents heretofore marked Board's Exhibits Nos. 2 and 3 respectively for identification were received in evidence.)

Trial Examiner Myers: Does anybody else want to be heard on the motion to dismiss?

(No response.)

Trial Examiner Myers: Hearing none, I will deny the motion at this time, with leave to renew. I do not have any of the facts before me, so that I can pass upon the motion. That is why I feel constrained to deny it at this time.

Are there any other motions, gentlemen?

Mr. St. Sure: Before we proceed, Mr. Trial Examiner, I am naturally curious about the Board's position as expressed by Mr. Jennings, that the Teamsters are in this proceeding for a limited purpose only. We find them quite generally in this proceeding from our point of view, without any limitations at all. We would like to know what the limitations are that Mr. Jennings has in mind, so that we will know how to proceed.

Trial Examiner Myers: Have you received a copy of the motion to dismiss of the Teamsters and the California State Council? [32]

Mr. St. Sure: Yes, I received that.

Trial Examiner Myers: They appear here especially.

Mr. St. Sure: That may well be, but they likewise remain as parties to the contract.

Mr. Tobriner: They likewise appeared especially for the purposes of the motion, and they likewise have filed an answer. Hence the motion is denied for the purposes of this hearing, we are now in here generally, and we are very anxious to know what Mr. Jennings' mysterious notions may be.

Trial Examiner Myers: I imagine that he means that if he wants to bring in some matters showing, as he says, his independence of 8(1), that will not affect you. That only goes to the employer.

Is that what you mean?

Mr. Jennings: That is one of the things, Mr. Examiner. I think whatever violations of the Act were committed by the Respondent had no relation to the contract or are no concern of the Teamsters.

Trial Examiner Myers: You mean, by the employers?

Mr. Jennings: By the employers, that is right, and that Mr. Tobriner's legitimate interest is limited to the defense of his contract, and no more.

Trial Examiner Myers: We will take that up when the time comes.

Is that all right with you gentlemen? [33]

Mr. St. Sure: That is all right with me.

Mr. Tobriner: It absolutely makes no sense to me, Mr. Trial Examiner, that Mr. Jennings should be in here telling us that we are not interested in the situation in some form. Unfortunately or fortunately, we are most interested in the situation. Although this is the third such proceeding that I have now gone through with respect to the same essential interests, the associate counsel with Mr. Jennings from the Regional Office have not yet seen fit to tell us that we were not most interested in every way. They have never made this statement before. That is why I say it is mysterious.

Mr. Jennings: This is the first 8(3) case we ever had, Mr. Examiner, independent of 8(1).

Mr. Tobriner: That, Mr. Jennings, as the evidence undoubtedly will disclose, involves an interpretation of the existing contract, which the Board recognized to be valid. Certainly we are interested in that.

Mr. Jennings: I will be prepared to argue the point if it arises, Mr. Examiner.

Trial Examiner Myers: All right. We will wait until you make some objections, and then I will hear counsel on that.

Mr. Jennings: I should like to call the Examiner's attention to Paragraph 1 of the complaint, which sets out certain commerce facts as admitted. [34]

Trial Examiner Myers: Admitted by whom?

Mr. Jennings: Admitted by both the Company and C.P.&G. and by the Teamsters; by all parties.

Trial Examiner Myers: Very well.

Mr. Jennings: I should like to ask a stipulation by all parties at this time that those allegations are correct, and ask the admission of the Respondents that they concede that they are engaged in commerce within the meaning of the National Labor Relations Act.

Trial Examiner Myers: You mean the Respondent employers?

Mr. Jennings: Yes, sir.

Trial Examiner Myers: Whether they are engaged in commerce?

Mr. Jennings: That is right.

Trial Examiner Myers: Do you so stipulate?

Mr. St. Sure: Yes.

Trial Examiner Myers: It is stipulated by the parties that the Unions are labor Unions within the meaning of the Act.

Mr. Tobriner: I hate to do so, but I think I will be constrained to recognize that the FTA is a labor organization.

Mr. Jennings: I was going to request that stipulation. I think all counsel indicated willingness to stipulate for the purpose of this proceeding that

the organizations named in Paragraph 3 are labor organizations within the meaning of the Act.

Trial Examiner Myers: Do you so stipulate, Mr. Tobriner?

Mr. Tobriner: I so stipulate.

Trial Examiner Myers: You, Mr. Jennings?

Mr. Jennings: I so stipulate.

Trial Examiner Myers: You, Mr. Edises?

Mr. Edises: So stipulated.

Trial Examiner Myers: You, Mr. St. Sure ?

Mr. St. Sure: Yes.

Trial Examiner Myers: Thank you, gentlemen. Is there anything else?

Mr. Jennings: May it be stipulated further that the Respondent cannery is and at all times relevant in this proceeding was a member of the California Processors and Growers, Inc.?

Mr. St. Sure: Yes.

Mr. Jennings: Likewise I would like to ask a stipulation, as the Board has previously found, that the California Processors and Growers is an employer within the meaning of the National Labor Relations Act.

Trial Examiner Myers: Do you so stipulate, Mr. St. Sure?

Mr. St. Sure: I do.

Trial Examiner Myers: You, Mr. Tobriner?

Mr. Tobriner: Yes.

Trial Examiner Myers: You, Mr. Jennings?

Mr. Jennings: So stipulated. We so allege in our complaint.

Trial Examiner Myers: You, Mr. Edises?

Mr. Edises: Yes.

Trial Examiner Myers: Are there any other stipulations or concessions that you want at this time, Mr. Jennings?

Mr. Jennings: I wish to add one allegation to the complaint, which was left out in typing and which has already been stipulated to, as follows—

Trial Examiner Myers: You mean you want to move to amend the complaint?

Mr. Jennings: Yes, Mr. Examiner.

Trial Examiner Myers: Very well. Make your motion.

Mr. Jennings: To add this paragraph—

Trial Examiner Myers: What should it be designated as?

Mr. Jennings: It could be Paragraph III-A, coming in between Paragraph III and IV.

That: "Food, Tobacco, Agricultural and Allied Workers Union of America, CIO, herein called the 'FTA-CIO', and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and California State Council of Cannery Unions, AFL, herein jointly referred to as the 'AFL', are and at all times herein alleged were labor organizations within the meaning of Section 2, Subdivision (5) of the National Labor Relations Act.

Trial Examiner Myers: That is why I asked for the stipulation.

Mr. St. Sure: No objection.

Mr. Edises: No objection.

Trial Examiner Myers: Very well. The motion is granted.

Mr. Jennings: May this be off the record?

Trial Examiner Myers: Let us take a short recess, instead of going off the record. That will give me a chance to read the pleadings.

(Whereupon a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Myers: Are you ready to proceed, gentlemen?

Mr. Jennings: Ready.

Trial Examiner Myers: Very well. Will you call your first witness?

Mr. Jennings: Mr. Examiner, we have discussed off the record with counsel the method which we think will expedite this case somewhat. It will require a departure from the technical niceties of the presentation of the case, in that I will in effect be offering part of the Respondents' case, and I will be offering in effect part of my rebuttal in connection with the case in chief. I think that is the only way this case can be actually understood and tried. That is, I could technically prove the discharges, and they could come in and prove the contract, and then I could come back and prove the other things in connection with the contract.

I would prefer, and I think all counsel would prefer, that we get right into the issues of the case, instead of proceeding in that fashion.

Trial Examiner Myers: There will be no objection.

Mr. Jennings: I should like therefore at this time to offer—perhaps it ought to be Respondents'—

Trial Examiner Myers: If you are going to offer any papers, you had better offer them as Board's Exhibits.

Mr. Jennings: All right.

As Board's Exhibit 4(a) a copy of a document entitled "Collective Bargaining Agreement Between California Processors and Growers, Inc., and The American Federation of Labor and California State Council of Cannery Unions as adopted June 10, 1941, amended January 26, 1942, amended July 10, 1943", with this stipulation, that the contract is not asserted by the Respondent employer to be a closed shop contract, that it does not require employees to maintain their membership in good standing in the contracting union, and that the contract is not urged as a defense of the charge in that sense.

Mr. Tobriner: We certainly do not stipulate to any such characterization of the contract by counsel. [39]

Trial Examiner Myers: Then there is no stipulation?

Mr. Tobriner: There is no stipulation whatsoever on that.

Mr. Jennings: I ask that as an admission by counsel for the Respondent canners, Mr. Examiner.

Trial Examiner Myers: The employer?

Mr. Jennings: Yes, Mr. Examiner.

Mr. Tobriner: I object to any admission by an employer as to the legal effect of the contract. I do not see how counsel can tell us, learned as he may be, what that contract provides. That is a matter



of law and a matter we want to be heard on, as a matter of fact. The contract speaks for itself. I mean, that much we can agree on. The contract can go in, but certainly we do not want any stipulation as to its effect, or admission.

Trial Examiner Myers: What do you say, Mr. St. Sure?

Mr. St. Sure: At several stages of this proceeding, the California Processors and Growers have indicated their position with regard to their interpretation of this contract. I am prepared to state what that interpretation is.

First, in so far as the green book contract that Mr. Jennings has offered, the contract, in a previous phase of this proceeding, in the Bercut-Richards case, which was 20-R-1414, and a large number of other numbers, was identified and described, and it was there indicated that the green book, the printed contract, was extended by an exchange of letters in the form in which it appears in print, according to the contention of the AFL and the employers, to cover the period to March 1, 1946.

In addition to the green book contract and the extension by letters which I have referred to, there have been modifications of that contract made prior to March 1, 1946, in the following respects.

There was a proceeding before the War Labor Board involving the contract and some of its conditions, and that proceedings, although started in the middle of 1944 as a dispute case, did not become final until May or June of 1945, at which time the Order of the National War Labor Board

amending or directing certain changes in the contract, was made a part of the contract. That is, both by an exchange of letters as between the union and the employers, those amendments were actually incorporated in the green book and were effective after that time and over a retroactive period as determined by the War Labor Board. In addition to that, the contract was amended as of the 1st of November of 1945 in connection with certain negotiated wage changes. Those amendments were incorporated in the written supplement to the contract which would vary the terms of the green book. All of those documents that I refer to will be available, these amendments, changes and extensions, and I have told Mr. Jennings that I will supply copies for the record if numbers may be reserved. I do not have them here. [41]

As to the position of the employers with regard to the contract itself, it has been our position——

Trial Examiner Myers: You mean the green book contract?

Mr. St. Sure: The green book contract. That, in so far as the union security provisions are concerned, the language of the contract speaks for itself, and there is no express requirement in the written contract that the employees should maintain good standing in order to continue their employment. The contract does provide that new employees shall affiliate with the Union. It does provide that there shall be preferential employment of non-employed Union members. It provides for certain clearance procedures in connection with the

hiring practices set up in the contract, but there is no express provision with regard to discharge for lack of good standing. However, the practice in the industry over a period of years was to maintain a Union shop condition in that only AFL employees were in the plants over a period of many years, and there will be testimony in this particular case with regard to the administration of the contract in operation.

In addition to that, in this case there is, in the instance of the G. W. Hume Company, a supplemental arrangement or agreement which likewise has been ordered, which provided for a check off of dues on a compulsory basis for this particular plant.

All of those facts, and circumstances, added together, constitute the employers' position with regard to this contract.

So far as the written document itself is concerned, I think it is sufficient to say that it speaks for itself. We believe the language is plain, that a reading of it, although it is a long document, will disclose that there is no express written requirement that requires written notice for lack of good standing. However, the Board has seen fit to classify it as a closed shop agreement.

Trial Examiner Myers: When you said the "Board", what did you mean?

Mr. St. Sure: I meant the National Labor Relations Board decision, as well as the letter of Chairman Herzog to Congressman Anderson.

But, in the decision of the Bereut-Richards case

and in the opinion of the Board—which we do not feel is anything but surplusage, but as long as it happens to be the matter of interest, one of the views the Board expressed is that this is in fact a closed shop contract, despite the fact that in the oral argument before the Board in Washington just last January I expressed the views that I am now expressing as to the employers' idea of what the contract amounts to. [43]

Mr. Jennings has a certified excerpt from the statements made by me in Washington, at least as the Reporter heard them. If Mr. Jennings is going to offer it, I should like to be able to translate them into English, because the Reporter apparently had been talking some language which I cannot understand upon re-reading it. I do not think the statement that I made in Washington, as it appears in the Reporter's record, would add very much to the point of view of enlightenment in so far as this record is concerned, because it does not seem to be English.

Mr. Tobriner: If I may be heard on the same subject matter for just a moment in regard to the position of the Board here as to this contract, I submit it was argued before the Board, and that we have a ruling or an opinion or a provision, whatever it is to be called by counsel for the Board, in the following language, which is in the same paragraph to which counsel already referred.

Trial Examiner Myers: That is the Supplemental Decision?

Mr. Tobriner: Yes, the Supplemental Decision.

Trial Examiner Myers: On what page?

Mr. Tobriner: On Page 5. It is the last line there, Mr. Trial Examiner. [44]

Trial Examiner Myers: Before Footnote 15?

Mr. Tobriner: No, Footnote 12. It is in the text of the Decision, right ahead of Footnote 12.

Trial Examiner Myers: You mean, at the top of the page?

Mr. Tobriner: It is the last line of the Decision, right above the footnote there, the last line on that page of the text of the Opinion. It reads as follows:—

Have you found that, Mr. Trial Examiner?

Trial Examiner Myers: Go ahead.

Mr. Tobriner: “In this state of the record, no legal effect may be given to the closed-shop provision contained in the current collective agreement after their expiration date; . . . .”

Trial Examiner Myers: Then comes Footnote 15?

Mr. Tobriner: Yes, then comes Footnote 15. It then says:

“Moreover, no requests for discharges resulting from activity in the election—”

Trial Examiner Myers: That is all right.

Mr. Tobriner: Yes. I call to the attention of the Trial Examiner that the Board language is very explicit. It says that no legal effect may be given to the closed shop provisions after their expiration date, the expiration being March 1, 1946. These very charges, evidently, as set forth in the complaint, occurred prior to March 1, 1946. [45]

Therefore, I want the Trial Examiner to recognize it as our position. The Board has ruled in this matter, and the Regional Office now is taking a contrary position to the National Labor Relations Board and attempting to blow hot and cold in the same paragraph at the same time, a rather confusing and troubling position, but we are getting used to that.

Mr. St. Sure: I would like to comment merely: I mentioned the Board reference to the contract, its characterization of it is as a "closed shop agreement", rather than to point up again some of the confusions which the employers have had to attempt to live with in the situation and to be bound by the Board's characterization of the contract, because I do not want to be in the position of blowing hot and cold, as the Board apparently has done and continues to do in these proceedings.

It is a matter of historical interest to us that the Board characterized the contract as a "closed shop agreement", and then seeks to prosecute us because we executed our rights under the contract as if it were a closed shop. That is merely one of the many anomalies in this entire situation, and I refer to it for that reason only.

Mr. Edises: Mr. Examiner?

Trial Examiner Myers: Yes, sir.

Mr. Edises: I think that a great deal of "sound and fury" [46] is being created in regard to the language which the Board used in its Supplemental Decision.

Mr. St. Sure: May the record indicate that my

voice was modulated, that I was not creating "sound and fury", because this will go into a cold record.

Trial Examiner Myers: Nobody has raised their voice above a normal speaking voice.

Mr. Edises: That refernece had nothing to do——

Trial Examiner Myers: Let us not get into those characterizations. All I have before me now is an offer by Mr. Jennings, offering the contract in evidence.

Mr. Jennings: May I make a number of offers in connection with that, which have been brought up by Mr. St. Sure's statement?

I should like to request that Board's 4 (b) be reserved for the written supplement to the proposed Board's Exhibit 4 (a), and that Board's Exhibit 4 (c) be reserved for the exceptions which were issued relating to the WLB Directive.

You will have that, Mr. St. Sure?

Mr. St. Sure: Yes.

Mr. Jennings: Those are the only two additional documents that we should have.

Mr. St. Sure: That is right, according to my recollection. If there are others that I find I have overlooked or neglected, we will produce them, but those are the only [47] changes that I recall.

Trial Examiner Myers: The only thing that you are offering now is that green book contract, is that right?

Mr. Jennings: That is right, Mr. Examiner.

Trail Examiner Myers: Is there any objection to that going in evidence, gentlemen?

Mr. Edises: No objection.

Mr. Tobriner: No objection, so long as it defines the contract in the language which Mr. Jennings points out.

Trial Examiner Myers: There is no stipulation. Nobody is stipulating to anything.

There being no objection, the book is received in evidence, and I will ask the Reporter to please mark it as Board's Exhibit 4 (a).

(The document heretofore marked Board's Exhibit No. 4 (a) for identification was received in evidence.)

Trial Examiner Myers: I will also request the Reporter to please reserve for further offer 4 (b) and 4 (c), for the presentation of the same and other documents.

Mr. Jennings: I will have copies of those tomorrow.

In connection with that matter, Mr. Examiner, and in view of the statements that have been made here, I should like to offer as Board's Exhibit 5 a copy of a letter on the letterhead of the California Processors and Growers, Inc., dated November 20, 1945, addressed to California State [48] Council of Cannery Unions, signed by Mr. St. Sure and by Mr. Bristow, and ask permission to substitute two clean copies for this one, which is somewhat marked up.

Trial Examiner Myers: Is there any objection to that letter going in evidence, gentlemen?

Mr. Tobriner: May I have a moment, Mr. Trial Examiner, to examine it?

Trial Examiner Myers: Certainly.

(Brief pause.)



Trial Examiner Myers: Any objection?

Mr. Tobriner: Mr. Trial Examiner, I have a little——

Mr. St. Sure: I have no objection to the letter being offered, since I wrote it, I believe, but it does remind me of a further situation which we might as well have before the Trial Examiner in connection with this very proceeding.

The green book contract which you have in your hand and which has been offered here in evidence, provides that in the event that there should be any dispute with regard to the non-affiliation of employees in any of the plants covered by the contract, that that dispute shall be resolved by reference to an Adjustment Board. In the event the Adjustment Board does not reach a decision, it shall be referred to arbitration. The determination of the Arbiter is to be final and binding on the parties in connection with the question of either affiliation or discharge. [49]

The very issue in this case involving the employees whose names are set forth in the complaint filed by the National Labor Relations Board has, under the contract procedures, been submitted to arbitration, the agreement of the parties being that the Arbiter shall be named by the Labor Department and shall be a member of the staff of the Conciliation Service of the United States Department of Labor.

By that stipulation, which was accepted by the Department of Labor Conciliation Service, the issues in this matter, we believe, under the contract proceedings, are now pending before another agency

of Government which will attempt to resolve the issues and determine the rights of the employers, the workers and the parties to the contract.

I mention again, merely as a matter of historical interest, that the Labor Department has found it apparently too hot to handle, and that they have not appointed an Arbiter, although the Conciliation Service agreed that it would do so.

Mr. George Cheney, Commissioner of Conciliation, met with the parties to discuss preliminarily the matter of arbitration, but subsequently has advised us in writing that he cannot act, or that he declines to act, and the matter is still pending before the Conciliation Service of the Department of Labor. [50]

I mention that in connection with this letter, because the letter specifically refers first to the fact that we have expressed our view that the terms of the contract do not require discharge, but that there is a procedure under the contract for the settlement of disputes of this kind by arbitration.

Mr. Edises: I would like to point out to the Examiner that the existence of such a provision in the contract could have no legal effect whatever on the authority of the Board for the reasons provided in Section 10 (a) of the Act, namely, that the power of the Board to prevent the commission of unfair labor practices is exclusive and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

Simply so that the record may be complete, I want to indicate to the Examiner that the action of

the Labor Department in going ahead with that arbitration in spite of the pendency of these unfair labor practice charges has been the subject of complaint by FTA-CIO nationally through the Department of Labor, and that may have something to do with their failure to go ahead.

Mr. Tobriner: Merely in order that our position may be clear on that, Mr. Trial Examiner, the Board has ruled in two decisions, first in the direction of elections, which is [51] Board's Exhibit 2, and secondly in the Supplemental Decision, that a valid contract exists by and between C. P. & G. and the AFL. That is the official ruling of the Board, and there is no question about that, in two different decisions. However, that contract has certain procedures set up under it. One of those procedures is if there is a difficulty, it shall be determined by arbitration.

We have proceeded under the valid contract and tried to determine it by arbitration, and are so doing. Nevertheless, despite the ruling of the Board in two instances, it now charges us to be in some manner violating the National Labor Relations Act, which we find difficult to understand, to put it very mildly.

Trial Examiner Myers: Is there any objection to the paper going in evidence?

Mr. Tobriner: No objection.

Trial Examiner Myers: Mr. St. Sure?

Mr. St. Sure: No objection.

Trial Examiner Myers: Mr. Edises?

Mr. Edises: No objection.

Trial Examiner Myers: There being no objection, the paper is received in evidence, and I will ask the Reporter to please mark it Board's Exhibit No. 5.

(The document referred to was marked Board's Exhibit No. 5, and was received in evidence.) [52]

### BOARD'S EXHIBIT No. 5

California Processors & Growers, Inc., Financial  
Center Building, Oakland 12, California.

November 20, 1945.

California State Council of Cannery Unions  
1916 Broadway  
Oakland, California

Gentlemen:           Atten: Mr. Hal P. Angus

This will acknowledge receipt of your letter of November 17, 1945 concerning a bulletin alleged to have been issued by Local 82 FTA-CIO, and quoted by you as follows:

"We have reached an agreement with the California Processors and Growers that no one has to pay dues to the AFL to work in the canneries. Every FTA-CIO member should immediately sign a revocation slip and start paying dues to Local 82, FTA-CIO."

Replying to your demand for "an official statement . . . as to whether or not any understanding or

agreement has been reached between the FTA-CIO and the California Processors and Growers," the following is our response:

1. California Processors and Growers, Inc., has reached no agreement with FTA-CIO that "no one has to pay dues to the AFL to work in the canneries."

In discussions with representatives of FTA-CIO, we have reiterated our position that the existing collective bargaining agreement will be observed by California Processors and Growers, Inc. Since these discussions, we have received a telegram from Edgar Warren, Director of Conciliation Service, U. S. Department of Labor at Washington, D. C., advising us that the contract with the AFL remains "in force and effect until March 1, 1946."

2. California Processors and Growers, Inc. has advised representatives of FTA-CIO that new employees are required to affiliate with the AFL as a condition of employment, and that canneries are required to supply the AFL unions with lists of all employees who fail to present evidence of AFL union membership.

In discussions with representatives of FTA-CIO, we have outlined the procedures followed under the contract, and have advised them that despite the fact that we are not obligated by contract to discharge employees for failure to maintain union membership, nevertheless all disputes arising in this connection are required to be submitted to the Central Adjustment Board, under the contract, for final determination.

We have in no wise changed our position concerning payment or non-payment of dues, nor have we reached any agreement with FTA-CIO concerning revocation slips, which are controlled by the 1945 W.L.B. Directive Order.

A copy of this communication is being sent to the officials of FTA-CIO.

Yours truly,

/s/ J. PAUL ST. SURE,

Attorney

/s/ J. W. BRISTOW,

Secretary-Treasurer.

JPSS/OB-L

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Mr. Jennings: Mr. Examiner, as Board's Exhibit 6, I should like to offer in evidence a certified copy of an excerpt from the oral argument held before the Board on January 24, 1946, in the matter of Bereut-Richards, et al, 20-R-1414. I have shown that to Mr. St. Sure, and as he indicated previously, he has some doubt that those words are exactly what he said.

Mr. St. Sure: I do not know whether you desire to have me try to correct the statement which was made. I simply state that even though the Reporter certified to the language, that I think it is largely meaningless and I did not use the language which is being offered by counsel. However, if there is any value that he feels is in the statement, if any sense can be made from the Reporter's transcription

of it, I have no objection to it going in. It was rather was a matter of pride that I made the objection that I did. I hate to be in the position of having a record disclose that I used such very bad English.

Mr. Jennings: I am interested in the assumption, Mr. Examiner, and not in the precise words. There may be some grammatical expressions there which I am sure Mr. St. Sure would not use, but I am interested only in the substance of the statements made.

Trial Examiner Myers: Is that all right, Mr. St. Sure?

Mr. St. Sure: Probably it is false pride on my part, as [53] I say. I do not think there is much conflict in the sense that may be made from the language as it appears.

Trial Examiner Myers: What did they have, a stenotypist?

Mr. St. Sure: I have forgotten. I was curious after I read the record, and tried to remember, but I do not recall that the young man who was there seemed to go right along as if he were getting every word of it, and interrupted none of us, even though the argument went rather rapidly. But certainly, the results were peculiar. He even had the Board members saying things that certainly surprised me.

Mr. Edises: It was not a stenotypist.

Mr. Tobriner: May I suggest, if that is to go in, that the entire record of the hearing go in.

Trial Examiner Myers: You mean the entire oral argument?

Mr. Tobriner: Yes. I think my statements ought to go in, too. Why should a piecemeal fragment of

an argument that is hardly intelligible, as a matter of fact, go in?

Mr. Edises: Mr. Examiner, as I understand it, the only purpose of the offer is to show an admission by counsel for the Respondents on a limited point, namely, on whether or not it is a closed shop contract.

Mr. St. Sure: I do not like to have it characterized by the term "admission". It certainly contains, as my previous statement contained, an outline of the position of [54] the employers. Whether it be an admission or contention, I tried to outline what our interpretation of the contract is.

Mr. Jennings: My only purpose, Mr. Examiner, is to indicate what position Mr. St. Sure took before the Board with regard to the contract.

Mr. St. Sure: I do not contend there is any inconsistency with the statement I made this morning.

Mr. Jennings: You do not contend that there is any inconsistency?

Trial Examiner Myers: Do you want it in, anyway?

Mr. Jennings: Yes.

Trial Examiner Myers: Any objection?

Mr. Tobriner: I object, unless the whole record goes in.

Trial Examiner Myers: You can put in the balance, if you wish.

Is there any objection to this part going in?

Mr. Tobriner: My only basis of objection is that it is an excerpt and does not show the rest of the argument.

Trial Examiner Myers: You may put in the bal-



ance, if you think it is necessary and pertinent to the issues in this case.

I will overrule the objection, and receive the paper in evidence. I will ask the Reporter to please mark it as [55] Board's Exhibit No. 6.

(The document referred to was marked Board's Exhibit No. 6 and was received in evidence.)

BOARD'S EXHIBIT No. 6

United States of America  
National Labor Relations Board

I, John E. Lawyer, Chief of the Order Section of the National Labor Relations Board, being duly authorized by the Rules and Regulations of said Board, do hereby certify that annexed hereto is a full, true, and complete copy of excerpts from pages 90 and 91 of the stenographic transcript of oral argument held before the National Labor Relations Board on January 24, 1946, "In the Matter of Burcut Richards Packing Company, et al. and Cannery & Food Process Workers Council of the Pacific Coast and its affiliated unions; Food, Tobacco, Agricultural and Allied Workers Union of America, C.I.O.," the same being Case No. 20-R-1414, et al.

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of the National Labor Relations Board this day of March 14, A.D. 1946, at Washington, D. C.

[Seal]      /s/ JOHN E. LAWYER,  
Chief, Order Section.

\* \* \*

[90] Mr. Reilly: Are you thinking of "closed shop?"

Mr. St. Sure: No, sir. The contract we have provides that initial employment shall call for affiliation with the union, but the contract itself does not expressly require that we discharge people for not maintaining good standing in the union.

[91] A. F. of L. maintains the side that we have a union shop and should discharge people. We are in that conflicting position. The contract does not express it. The A. F. of L. observes us as a union shop and they have picketed us for not doing so. That contract is in effect until the 28th of February. It is our position that it is in effect, because the Board assumed that it was in its decision; although I understand some question has been raised to that. We assume it is in effect.

\* \* \*

[Endorsed]: Received March 19, 1946.

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Mr. Jennings: There is just one further matter, Mr. Examiner, which has been brought up by the discussion here. That is the position of the parties taken upon the assumption that the Board decided in the representation case, in its supplemental decision, that this was a closed shop contract. The Examiner is aware that a contract is often described in shorthand terms as "closed shop," in those cases in which it has any form of union preference in it. This contract does provide for preference in em-

ployment to that extent. To that extent perhaps it is broadly described as "closed shop." It is not a closed shop in the sense it provides for discharge of those who fail to maintain membership in good standing.

Trial Examiner Myers: In other words, the contract speaks for itself.

Mr. Tobriner: Mr. Examiner, I am not going to argue on this now, but I don't want the record to show that I have not answered it. I think Mr. Jennings characterized it incorrectly, but this is not the occasion to argue it.

Trial Examiner Myers: I agree with you.

Mr. Jennings: As Board's Exhibit 7, Mr. Examiner, I will offer in evidence a copy of a supplemental agreement headed "Dues Collections and Check-Off," dated August 21, 1944, between the George W. Hume Company and Cannery Workers Union No. 22382.

Trial Examiner Myers: Is that the same Respondent as in this case, G. W. Hume?

Mr. Jennings: Yes, Mr. Examiner, that is correct.

Trial Examiner Myers: Is that right, Mr. St. Sure? George W. Hume and Company is the same as G. W. Hume Company?

Mr. St. Sure: I assume so. Yes, that is correct.

Trial Examiner Myers: Is that correct, Mr. Tobriner?

Mr. Tobriner: I really do not know. I have no reason to think otherwise.

Mr. St. Sure: Yes, I am sure that is correct.

Trial Examiner Myers: Is there any objection to this paper going in evidence, gentlemen?

Mr. St. Sure: I have none.

Mr. Tobriner: No, I have none.

Trial Examiner Myers: There being no objection, the paper is received in evidence. I will ask the Reporter to please mark this Board's Exhibit No. 7.

(The document referred to was marked Board's Exhibit No. 7 and was received in evidence.)

### BOARD'S EXHIBIT No. 7

#### Dues Collection and Check-Off

The Company hereby agrees to deduct from the pay of each employee employed by the Company who is covered by this agreement all Union dues and assessments, and for this purpose the Union shall provide the Company, on or before the first day of each month, the amount of dues payable per month to the Union by each member. Said dues shall be deducted from the pay check of the employee on any payday that falls on a day following performance of three days' work by the employee in any calendar month.

The Company will promptly notify all employees of these conditions by placing an appropriate statement thereof on the bulletin board in the plant of the Company.

If any new assessment shall be levied as against members of the Union employed by the Company,

such assessments must first be approved by the Union and notice thereof given to the Company before such assessments can be deducted from the salary of the employees by the Company.

Any sums deducted by the Company for the benefit of the Union in any month shall be payable to the Secretary-Treasurer of the Union on or before the 25th day of the following month. The Secretary-Treasurer of the Union shall furnish an appropriate receipt to the Company upon receipt thereof. The Company shall not be liable to the Union for any sums other than those collected by the Company.

The Company and the Union shall work out a mutually satisfactory agreement, by which the Company will furnish the Secretary-Treasurer of the Union monthly, a record of the dues, from whom the deductions have been made, together with the amount of such deductions.

In Witness Whereof we have hereunto set our hands and seals this 21st day of August, 1944.

GEORGE W. HUME  
COMPANY.

By R. G. HUME,  
President.

CANNERY WORKERS'  
UNION # 22382.

[Seal] R. M. TOMSON,  
Secretary-Treasurer.

Reference Is Made to "Dues, Collection and Check-Off Agreement Dated the 21st day of August, 1944.

It is hereby mutually agreed and understood that this letter becomes a part of the above-mentioned Agreement for the purpose of fixing possible expiration date of the Agreement by notification by either party on or before March first of any year; the termination of the Agreement to become effective if notice is filed by either party on or before 12 o'clock noon on the first day of March of any year.

GEORGE W. HUME  
COMPANY.

By R. G. HUME.

Accepted This 21st day of August, 1944.

CANNERY WORKERS'  
UNION No. 22382.

[Seal] By R. M. TOMSON,  
Secretary-Treasurer.

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Mr. Jennings: As Board's Exhibit 8, Mr. Examiner, I offer in evidence a Memorandum of Agreement dated March 25, 1946, between G. W. Hume Company and the A.F.L.

Trial Examiner Myers: Is there any objection, gentlemen?

Mr. Tobriner: No objection.

Mr. St. Sure: I have none.

Mr. Edises: No objection.

Trial Examiner Myers: There being no objec-

tion, the paper is received in evidence. I will ask the Reporter to please mark it as Board's Exhibit No. 8.

(The document referred to was marked Board's Exhibit No. 8 and was received in evidence.)

## BOARD'S EXHIBIT No. 8

### Memorandum of Agreement

This Memorandum of Agreement, made and entered into this 25th day of March, 1946, by and between G. W. Hume Co., located at Turlock, California, hereinafter referred to as Employer, California State Council of Cannery Unions, A. F. of L., and Cannery Workers' Union, Local 22382, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, A. F. of L., hereinafter referred to as Union,

Witnesseth: That in consideration of the premises it is mutually agreed as follows:

1. It shall be a condition of employment with the employer that all employees covered by this agreement shall become and remain members of the Union in good standing. Present employees who are not as of the date of this agreement members of the Union must become members within ten (10) days from the date hereof. Any new employee shall be required within ten (10) days of the date of hiring to become a member of the Union and thereafter remain a member in good standing.

Persons who fail to maintain good standing in

the Union in accordance with the By-Laws thereof shall be discharged within thirty-six (36) hours after the company is so notified by the Union.

In the hiring of additional employees, the employer shall give preference to unemployed members of the local Union provided such individuals have the necessary qualifications and are available within forty-eight (48) hours after being notified. As a basis for preferential consideration unemployed members of the local Union shall be required to present a clearance card from the local Union, evidencing the fact of their paid-up membership.

2. Any adjustment in wages, hours or conditions, which may hereafter be agreed upon by the parties, shall be effective as of March 1, 1946, and retroactive to that date.

In Witness Whereof, the parties hereto have caused this Memorandum to be signed by their duly authorized officers this 25th day of March, 1946.

Employer

G. W. HUME CO.,

By R. G. HUME.

CALIFORNIA STATE COUN-  
CIL OF CANNERIES, A.F.L.

By /s/ HAL P. ANGUS.

CANNERY WORKERS  
UNION, LOCAL 22382,

By /s/ H. C. TORREANO.

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Mr. Jennings: May I proceed?

Trial Examiner Myers: Proceed.

Mr. Jennings: Mr. Heagle, please.



IRWIN C. HEAGLE

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name, please?

The Witness: Irwin C. Heagle.

Trial Examiner Myers: Will you please spell your last name for the Reporter?

The Witness: H-e-a-g-l-e.

Trial Examiner Myers: Where do you live, Mr. Heagle?

The Witness: At Turlock. 617 East Olive, Turlock. [58]

Trial Examiner Myers: You may be seated, sir. You may proceed, Mr. Jennings.

Q. (By Mr. Jennings): Mr. Heagle, where are you employed at the present time?

A. The G. W. Hume Company at Turlock.

Q. In what capacity? A. As boilerman.

Q. How long have you been employed by that Company? A. Fourteen years.

Trial Examiner Myers: For the past 14 years?

The Witness: Yes.

Q. (By Mr. Jennings): During the period of time that you were employed down there, did you ever become a member of the Cannery Workers Union Local No. 22382? A. I did.

Q. Did you hold any office in that Union?

A. I believe in 1943 I was appointed as Shop Steward at the plant, and on the Executive Board of the Local.

(Testimony of Irwin C. Heagle.)

Q. That Local was known as a "Federal Local," is that not true? A. That is correct.

Q. Chartered directly by the American Federation of Labor? A. That is correct.

Trial Examiner Myers: When did you join?

The Witness: I believe it was 1939.

Q. (By Mr. Jennings): I will show you, Mr. Heagle, a document which is here as Board's Exhibit No. 7, "Dues Collections and Check-Off," contract between the Hume Company and the Federal Local. Are you familiar with that agreement?

A. I was familiar with it at the time, yes.

Q. Mr. Heagle, did the membership of Local 22382 vote to sign such a contract with the Hume Company? A. Yes.

Mr. Tobriner: Objected to on the ground it is utterly immaterial. The contract is in evidence. To go back into the internal functions of the Union will take a lot of unnecessary time.

Trial Examiner Myers: What have you to say?

Mr. Jennings: I merely wanted to establish that this contract was signed with the knowledge and agreement of the Union, Mr. Examiner.

Trial Examiner Myers: You mean, the membership?

Mr. Jennings: That is right. There is nothing hidden about it.

Trial Examiner Myers: Will you answer the question, please? A. It was.

Q. (By Mr. Jennings): How in practice, Mr. Heagle, was that contract administered? How were the dues checked off and paid to the Union? [60]

(Testimony of Irwin C. Heagle.)

Mr. Tobriner: Objected to on the ground that it is again immaterial. I do not understand why we care now how the contract was administered with regard to dues collection.

Trial Examiner Myers: Overruled.

Mr. Tobriner: Maybe I do not understand the Board's position.

Trial Examiner Myers: Overruled.

A. I did not have anything to do with the deduction of the dues, but as I understand it, the payroll was picked up by the office of 22382.

Mr. Tobriner: I move to strike, Mr. Examiner. He does not understand. He just said so.

Trial Examiner Myers: Do not break into the witness. Let him finish.

A. (Continuing): It was taken into the Union office, and those members were checked off that owed dues or initiation fees, and it was then returned to the Company whereby the Company deducted those dues from the checks.

Mr. Tobriner: All right. I will now make the motion——

Trial Examiner Myers: To strike the whole answer?

Mr. Tobriner: To strike the portion after the part where he said he did not know but he understood.

Trial Examiner Myers: All right. Strike the whole answer. Will the Reporter please read the question? [61]

(The question was read by the reporter.)

(Testimony of Irwin C. Heagle.)

The Witness: My answer did not mean——

Trial Examiner Myers: Just answer the question.

The Witness: Oh, you want me to re-answer it again?

Trial Examiner Myers: Just answer the question.

Mr. Jennings: I will withdraw that question, Mr. Examiner.

Q. (By Mr. Jennings): Mr. Heagle, prior to the time that contract was entered into, who collected the dues in the plant?

A. I did, in 1943.

Q. How did you collect them?

A. People came to the boiler room and paid their dues.

Trial Examiner Myers: You will have to talk up a little louder, please.

Q. After that contract was entered into, did the employees pay their dues to you?

A. They did not.

Q. Did you pay your dues directly to the Union?

A. I was eliminated from paying dues on account of being Shop Steward.

Q. When employees were put to work by the Company, Mr. Heagle, during the time that you were Shop Steward, did the Company notify you of their employment, when new employees came to work? [62]

A. As a general thing, yes.

Q. What was done?

A. They were sent to me for a clearance.

(Testimony of Irwin C. Heagle.)

Q. What do you mean "a clearance?" Could you state for the record?

A. Well, it is a clearance issued by the Local to show that the party or parties were in good standing with the Union at that time.

Trial Examiner Myers: Are you still Shop Steward?

The Witness: I don't believe I have the right to say I am Shop Steward. I am acting as Shop Chairman.

Trial Examiner Myers: How long were you Shop Steward?

The Witness: Approximately two years, I believe.

Trial Examiner Myers: You mean, '43 and '44?

The Witness: '43 and '44.

Trial Examiner Myers: What were you doing in '45?

The Witness: And part of '45, up until June, 1945.

Trial Examiner Myers: Then you became Shop Chairman?

The Witness: Chairman of the Shop Committee, I believe they call it.

Trial Examiner Myers: Oh. Is that what they call it?

Q. (By Mr. Jennings): Mr. Heagle, during the period of time that you were Shop Steward, either before or after the check-off contract which is here in evidence as Board's Exhibit No. 7, did you, on behalf of the Local Union, ever make a request of

(Testimony of Irwin C. Heagle.)

the Company that it discharge employees for failure to maintain their membership in good standing in the Union?

Mr. Tobriner: What are the dates of that, Mr. Jennings?      A. Not that I can remember.

Mr. Tobriner: Just a minute.

What was the date of your question?

Mr. Jennings: During the time that he was Shop Steward.

The Witness: Well——

Trial Examiner Myers: Wait a minute. He objected.

Mr. Tobriner: I did not object.

Trial Examiner Myers: Oh. You withdraw the objection?

Mr. Tobriner: I simply asked the question.

Q. (By Mr. Jennings): Prior to the time that you were Shop Steward, did you ever know of any other representative of the Union making such request of the Company?

A. Not that I know of, no.

Q. To your knowledge during any of the time that you were employed out at the Hume Company, was any employee fired at the request of the Union for failure to maintain membership in good standing in the Union?

A. Not to my knowledge.

Q. Calling your attention to the spring of 1945, Mr. Heagle, do you know Mr. Torreano?

A. I do. [64]

(Testimony of Irwin C. Heagle.)

Q. His initials are H. C. Torreano?

A. I wouldn't be sure about that.

Trial Examiner Myers: Do you know his first name?

The Witness: No, I don't.

Trial Examiner Myers: Maybe the parties will stipulate what his name is.

Mr. Tobriner: We will stipulate to the initials.

Trial Examiner Myers: What are they?

Mr. Tobriner: H. C.

Q. (By Mr. Jennings): In the spring of 1945, did you know a Mr. Brown? A. I did.

Q. Do you know what labor organization those gentlemen were identified with, if any, in the spring of 1945?

A. Mr. Torreano was identified as a member of the Teamster Organization, and although it never was stated in so many words, Mr. Brown was working with Mr. Torreano at the time, and I surmised he was still identified with the Teamster Organization.

Mr. Tobriner: I move the surmise of the position of these people be stricken.

Trial Examiner Myers: Strike it out.

What is Mr. Brown's first name?

Mr. Tobriner: L. H. Brown.

Trial Examiner Myers: Do you know what position he holds, if any, in the Teamsters?

Mr. Tobriner: At which time? Before we can put that in by evidence, or later, Mr. Trial Examiner.

(Testimony of Irwin C. Heagle.)

Trial Examiner Myers: Very well.

Q. (By Mr. Jennings): Do you recall an occasion in the spring of 1945 when Mr. Torreano and Mr. Brown visited the Hume plant in Turlock?

A. I do.

Q. Do you remember approximately when that was? What month it was?

A. I believe it was some time in the month of June.

Q. Of 1945? A. Of 1945.

Q. At the time these gentlemen visited the plant, was there any conference held with the employees?

A. There was an impromptu meeting held, yes, in the warehouse.

Q. About what time of day?

A. I don't—I can't tell you exactly what time of day it was.

Trial Examiner Myers: Was it during working hours?

The Witness: It was during working hours, yes.

Q. (By Mr. Jennings): Was any representative of Management present at the meeting?

A. Mr. Fordham. [66]

Trial Examiner Myers: Who?

The Witness: Mr. Fordham.

Trial Examiner Myers: How do you spell that?

The Witness: F-o-r-d-h-a-m.

Trial Examiner Myers: What is his first name?

Mr. Fordham: Free, F-r-e-e.



(Testimony of Irwin C. Heagle.)

Q. (By Mr. Jennings): What was Mr. Fordham's position with the Company?

A. I believe Superintendent.

Q. Were Mr. Torreano and Mr. Brown present at the meeting?      A. They were.

Q. What employees were present?

A. Do you want them by name, or——

Q. No, just by description.

A. All regulars; the warehouse crew and the front end, both.

Q. All the regular employees?      A. Yes.

Q. By "regular" you intend to distinguish those employees from the seasonal employees?

A. That's right.

Q. Where was this meeting held?

A. In front of the office, in the warehouse.

Q. About how many employees were present?

A. Somewhere between 20 and 30, I believe.

Q. Will you tell me what was said at the meeting by the gentlemen who attended, and what happened?

A. Well, they broached us about affiliating.

Trial Examiner Myers: Now, wait.

Q. Who are "they?"

A. Mr. Torreano—I believe Mr. Torreano done the talking, and he broached us about affiliating with the Teamsters, and some of us asked him why we could not hold a vote on that, and he told us we were not entitled to a vote. After that, the discussion was general.

(Testimony of Irwin C. Heagle.)

Q. Did Mr. Fordham say anything?

A. Mr. Fordham did not say nothing.

Q. How were you notified that there was to be a meeting?

A. Mr. Fordham came and told us.

Q. Did the employees join the Teamsters?

A. They did not.

Q. What did you do?                      A. Refused.

Q. At that time were your dues in the Federal Local being checked off under the contract, Board's Exhibit 7?

A. They were for the month of June, yes.

Q. Did any change in that situation occur after the month of June?                      A. It did.

Q. What happened? [68]

A. We signed revocations, had Mr. Hume stop deducting the dues from our checks.

Trial Examiner Myers: What did you sign?

The Witness: Revocations.

Q. (By Mr. Jennings): Were those written or oral revocations?                      A. They were written.

Q. Did you make any oral request to have your dues deductions stopped?

A. I did. We went to Mr. Hume and asked him to stop deducting, and he told us that we would have to have a written revocation, a written request, according to—I don't just remember what his words were.

Trial Examiner Myers: When did you go?

The Witness: In—I believe it was during the month of June.

(Testimony of Irwin C. Heagle.)

Trial Examiner Myers: After this meeting, or before?

The Witness: I believe it was after the meeting.

Trial Examiner Myers: Is that R. G. Hume?

The Witness: Yes, Mr. Ray—R. G. Hume.

Q. (By Mr. Jennings): Mr. Hume holds what office in the Company?

A. R. G. Hume? President.

Q. President of the Company.

You signed one of these revocations, is that correct? A. I did.

Q. Were any dues deducted from your check after June of 1945? A. They were not.

Q. You handed the written revocations, then, to the Company? A. Yes, we all did.

Q. And the dues stopped? A. Yes.

Q. When you say "We all did," do you mean the regular employees? A. Yes.

Q. After that time, did you on any occasion see Mr. Torreano or Mr. Brown or any other representatives of the Teamsters in the plant?

A. Very much so.

Q. On how many different occasions?

A. I could not name them.

Q. Were they in there during working hours?

A. During the working hours, yes; it was the non-operating season at that time.

Q. Were you ever—strike that—

Did Mr. Torreano and Mr. Brown call any later meeting than the one that you had described, later on in the season? A. Yes. [70]

(Testimony of Irwin C. Heagle.)

Q. Approximately when did that take place?

A. I believe it was some time in August, just before the start of the peach season.

Trial Examiner Myers: Just before the start of the what?

The Witness: Peach season.

Q. (By Mr. Jennings): That would be in the early part of August, then, would it not?

A. I believe it would, yes.

Trial Examiner Myers: '45?

The Witness: '45, yes sir.

Q. (By Mr. Jennings): Where was that meeting held, Mr. Heagle?

A. It was held in the Women's Check Room in the front end of the cannery.

Q. How were you notified of the meeting?

A. Notified by our foreman.

Q. To attend? A. Yes.

Q. Was that during working hours?

A. It was.

Q. When you got into the Women's Check Room, were Mr. Torreano and Mr. Brown in there?

A. They were.

Q. Were there any other representatives of the Teamsters there? A. They were.

Q. About how many?

A. I believe there were 7 or 8, at least.

Q. Were there any representatives of the Management present?

A. Mr. Gallardo and Mr. Fordham.

(Testimony of Irwin C. Heagle.)

Trial Examiner Myers: What is his first name?

The Witness: Arthur.

Trial Examiner Myers: what is his position, if any, with the Company?

The Witness: Assistant Superintendent, I believe.

Trial Examiner Myers: Is that right, gentlemen? Assistant Superintendent?

Mr. Gallardo: Correct.

Trial Examiner Myers: Mr. St. Sure?

Mr. St. Sure: That is correct.

Q. (By Mr. Jennings): Was any representative of the C.P. & G. present at this meeting?

A. Mr. Clough.

Trial Examiner Myers: What is his first name?

The Witness: F. S. Clough, C-l-o-u-g-h.

Trial Examiner Myers: What is his connection with the Association?

Mr. St. Sure: He is an employee of the California Processors and Growers.

Trial Examiner Myers: Just an employee?

Mr. St. Sure: Yes, sir. [72]

Trial Examiner Myers: About how many employees of the Hume Company attended that meeting, Mr. Heagle?

The Witness: All the regular workers working at that time. I believe it was between 20 and 30 at the time. I can't remember the exact number.

Q. (By Mr. Jennings): Who did the talking at that meeting?

A. Well, Mr. Clough and Mr. Torreano.

(Testimony of Irwin C. Heagle.)

Q. Who spoke first?

A. I believe Mr. Clough did.

Q. What did Mr. Clough say?

A. He asked us to clear through the Teamsters' Organization in order to keep the plan operating in a peaceful manner so they could pack their peaches.

Q. What do you mean when you say he asked you to "clear through"? What does that mean?

A. He wanted us to sign the clearance slips with the organization, with the AFL.

A. Those are the same sort of clearance slips that you as Shop Steward gave to the employees when they came to work?      A. It was.

Q. Did the year round employees customarily clear after the season had started?

A. It had not been customary, no.

Q. Had you ever been required to clear after you had gone to work? [73]

A. Not after we cleared when we first went in, no. As long as we were on the regular list, the regulars never were required to clear.

Q. The contract, Board's Exhibit 4 (a) will bear me out. There is a regular seniority list, is there not?      A. There is.

Q. Those employees were not required to clear by the terms of the contract?

A. Not more than the first time; after the first time.

Trial Examiner Myers: Once cleared always cleared, is that it?

(Testimony of Irwin C. Heagle.)

The Witness: That was the understanding, yes.

Mr. St. Sure: I do not know that I want to be in a position of accepting that as the contract provision.

Trial Examiner Myers: The contract still speaks for itself.

Q. (By Mr. Jennings): Did you say anything to that request, Mr. Heagle?

A. Yes, I did.

Q. What did you say?

A. Well, I mentioned the fact that I did not see why we had to clear, why we was required to clear, and I also asked Mr. Clough, if we signed the clearances, that we would be forced, or the other members would be forced to sign check-offs for withholding of dues, and Mr. Clough said that they would not be required, and so we signed, and at that time we all—I went up and signed the first clearance slip.

Trial Examiner Myers: Did you sign the clearance slip?

The Witness: I did, yes sir.

Q. (By Mr. Jennings): Did you sign it right there at that meeting?

A. Right at that meeting.

Q. Who had the clearance?

A. I don't know the man's name.

Q. One of the representatives?

A. One of the parties with Mr. Torreano.

Trial Examiner Myers: Did anybody else sign the clearance that day?

The Witness: We all did.

(Testimony of Irwin C. Heagle.)

Trial Examiner Myers: All the employees?

The Witness: All the employees, yes sir.

Trial Examiner Myers: That is, all the employees that attended that meeting?

The Witness: That was at that meeting, yes sir.

Q. (By Mr. Jennings): Will you tell me, Mr. Heagle, what you mean by the "dues check-off", what is that?

A. It is a slip authorizing the employer to withhold dues from the employees' wages, to withhold money to pay dues to the Union, that is, signing for it. That is the easiest way out. [75]

Q. You asked whether or not the employees would have to sign such a dues check-off agreement? A. I did.

Q. What was Mr. Clough's answer?

A. He said they would not.

Q. Was Mr. Fordham present at that time?

A. He was.

Q. Mr. Gallardo? A. They were.

Q. Did they say anything?

A. They did not.

Q. They did not contradict Mr. Clough?

A. No.

Q. When you cleared, did you sign any dues check-off? A. I did not.

Q. Or did you sign any thereafter?

A. I did not.

Q. Thereafter at any time did you hear that any employees had been required to sign any dues check-off?



(Testimony of Irwin C. Heagle.)

Mr. Tobriner: Objected to on the ground that what he heard is hearsay.

Mr. Jennings: It calls for merely a "Yes" or "No" answer, Mr. Examiner.

Trial Examiner Myers: I will overrule the objection. The objection was premature.

A. Yes, I have.

Mr. Tobriner: I will object again.

Trial Examiner Myers: Overruled.

Mr. Jennings: I will present further testimony, Mr. Tobriner, but I cannot prove everything by one witness.

Mr. Tobriner: I agree with you.

Q. (By Mr. Jennings): Thereafter did you make any complaint to any representative of Management with regard to that matter?

A. I did, to Mr. Fordham.

Q. What did you tell him?

A. I believe my exact words were that they was double-crossing us.

Trial Examiner Myers: When did you say that?

The Witness: The morning that they registered for the peach run.

Q. (By Mr. Jennings): That was about the 8th of August, 1945, was it not? A. Yes.

Q. Did any change in that situation take place after your complaint to Mr. Fordham?

A. I really don't know.

Q. Do you know whether or not employees continued to sign the dues check-off? [77]

A. By hearsay, yes.

(Testimony of Irwin C. Heagle.)

Q. Did you do anything about that?

Mr. Tobriner: Just a minute.

A. I had them sign revocations. I beg your pardon. I would like to take back that hearsay, if I may.

Trial Examiner Myers: Don't characterize. Just answer the question. We don't care what you call it.

A. (Continuing): Yes. They came to me and signed revocations, myself and a couple of the other boys.

Trial Examiner Myers: Who is "they"?

The Witness: The people that signed the check-offs.

Trial Examiner Myers: How many came to you?

The Witness: I should judge better than 150.

Trial Examiner Myers: When did they come to you?

The Witness: After they had signed their check-offs, within the next few days.

Trial Examiner Myers: Do you mean a few days after August 8, 1945?

The Witness: I would not know the exact date, but it was after the day of registration for the peach run.

Trial Examiner Myers: Do you know about how many days after?

The Witness: No sir, I could not tell you.

Trial Examiner Myers: Within a week, would you say?

The Witness: Yes, I believe it was within a week. [78]

(Testimony of Irwin C. Heagle.)

Trial Examiner Myers: Maybe you can fix the date by the—were the revocations dated?

The Witness: They were.

Trial Examiner Myers: Go ahead, Mr. Jennings.

Q. (By Mr. Jennings): Did you prepare written or printed revocations, Mr. Heagle?

A. In August, at this time, you mean?

Q. Yes.

A. No. These were—came in a book form. I believe you have a copy of them there.

Q. They were printed revocations?

A. Printed revocations, yes sir.

Q. After you received these revocations, what did you do with them?

A. Our committee took over one copy to Mr. Hume, and turned them in to the office, and the other copy was held by the Union.

Trial Examiner Myers: R. G. Hume?

The Witness: R. G. Humes, in the office of R. G. Hume.

Q. (By Mr. Jennings): That is, the employees themselves did not bring the revocations in, but the Committee did? A. Not at that time.

Q. Did Mr. Hume make any request of you in that connection?

A. Yes. He asked me to have the employees individually bring their revocations in.

Q. Was that done after that?

A. That was.

(Testimony of Irwin C. Heagle.)

Q. You have previously said that the representatives of the Teamsters were in the plant during the summer of 1945? A. Yes.

Q. Were those representatives in the plant during all of the time while you were there?

A. No. At one time we got an injunction forbidding any representative in the plant.

Trial Examiner Myers: Any representative of what?

The Witness: Of any Union.

Trial Examiner Myers: What?

The Witness: A representative of any Union, I believe was the way the injunction read.

Q. (By Mr. Jennings): Was that injunction later dismissed? A. It was.

Q. About when?

Mr. Jennings: We can stipulate——

Mr. Tobriner: About three or four days later, wasn't it, as soon as we could get down here and have it heard?

The Witness: Ten days, I believe was the time.

Trial Examiner Myers: Who got the injunction?

The Witness: Well, I think—to name parties, it was the Secretary-Treasurer of the Union at that time, and my name was on the request for the injunction. [80]

Mr. Tobriner: What Union are you speaking about now?

The Witness: The independent.

Mr. Jennings: May it be stipulated that that injunction was dismissed or released in the early

(Testimony of Irwin C. Heagle.)

part of September of 1945? I do not have the exact date. I know we took an adjournment in our hearing so you could go down there to that case.

Mr. Tobriner: It will be stipulated that it was in effect less than, I think ten days, or maybe even seven.

Trial Examiner Myers: Ten days from what date?

Mr. Tobriner: From the time it was issued, whatever date that was. It was a temporary restraining matter, as a matter of fact, dissolved upon the hearing of the Order to Show Cause.

Mr. St. Sure: The action referred to was an action of the Superior Court of the County of Stanislaus, No. 30224, with a number of individuals as plaintiffs and a number of individuals and unions and corporations as defendants. An order was issued, a temporary order returnable the 23rd day of August, 1945. It was issued on the 13th day of August, 1945. It was dissolved or dismissed, as I remember, either the 23rd or 24th.

Trial Examiner Myers: Of August.

Mr. St. Sure: Of August, yes sir.

Trial Examiner Myers: Very well.

Mr. Jennings: I am willing to accept that as a stipulation of facts.

Trial Examiner Myers: Do you, Mr. Tobriner?

Mr. Tobriner: Yes, so stipulated.

Trial Examiner Myers: You, Mr. Edises?

Mr. Edises: Yes, I so stipulate.

(Testimony of Irwin C. Heagle.)

Trial Examiner Myers: Thank you.

Q. (By Mr. Jennings): After the dissolution of that restraining order, were representatives of the Teamsters in the Hume plant?

A. They were.

Q. Were they in the plant prior to the date of the Board's election? A. They were.

Q. Were they there after the election?

A. After the election was held was during the slack season of the plant, and I believe they were in there, yes. I seen them there, but of course there wasn't much there for them to do at that time, because there was just the regular crew of workers.

Trial Examiner Myers: Did they work each day?

The Witness: No, not every day.

Trial Examiner Myers: How many days?

The Witness: I could not tell you.

Trial Examiner Myers: More than one day a week? [82]

The Witness: At times, yes.

Mr. St. Sure: Mr. Trial Examiner, I wonder if I might interrupt a moment?

Further identifying the injunction proceedings that have been referred to, I mentioned that the plaintiffs were individuals, as shown in the caption of the complaint, but in their pleading they allege that they were acting in behalf of and in the name of an organization known as "Cannery and Food

(Testimony of Irwin C. Heagle.)

Process Workers Union of the Modesto Area'', which they alleged to be chartered by the Cannery and Food Process Workers Council of the Pacific Coast.

I believe that is correct, is it not?

Mr. Tobriner: That is correct.

Mr. St. Sure: And that Mr. Heagle was alleged to be the President of that Union, the Witness.

Trial Examiner Myers: Were all the individuals there employees of G. W. Hume?

Mr. St. Sure: I believe not. There were other canners, members of the C.P. & G. as well.

Trial Examiner Myers: I mean, as party plaintiffs.

Mr. St. Sure: As party plaintiffs they do not allege that they are employees of any particular company. A number of individual companies are named as defendants. I imagine that there may be employees of others.

Trial Examiner Myers: I was wondering whether it was against G. W. Hume. [83]

Mr. St. Sure: It was against a number of the local canneries

Trial Examiner Myers: Oh, I see.

Mr. Jennings: Did we have an answer to that question?

(The record was read.)

Mr. Jennings: I should like to ask a stipulation of counsel, if I may, that the election among the employees of the Hume Company was held on the 7th of October, 1945, in the Hume plant.

(Testimony of Irwin C. Heagle.)

Mr. St. Sure: That is what the Board record discloses. I will so stipulate.

Mr. Tobriner: So stipulated

Trial Examiner Myers: Mr. Edises?

Mr. Edises: I am sorry, but I did not get that stipulation.

(The record was read.)

Mr. Edises: Yes, I so stipulate.

Trial Examiner Myers: What date was that?

Mr. Jennings: October 17th, Mr. Examiner.

Q. (By Mr. Jennings): Were there any representatives of the Teamsters in the plant on the day of the election?

A. There were not.

Q. Calling your attention to the month of November of 1945, Mr. Heagle, do you recall a conversation you had with Mr. Hume shortly after the middle of November, in which there was some discussion of a threatened boycott by the Teamsters?

A. Yes, I do.

Trial Examiner Myers: Which Mr. Hume was that?

The Witness: I beg pardon?

Trial Examiner Myers: Which Mr. Hume?

The Witness: Mr. R. G.

Q. (By Mr. Jennings): Do you remember approximately when that conversation took place?

A. I believe it was some time before the 20th of November.

Q. About how many days before the 20th?

A. Just a few days. I could not tell you exactly. Or, it could have been the day before.



(Testimony of Irwin C. Heagle.)

Q. Where did the conversation take place?

A. In the boiler room.

Q. Was that during working hours?

A. It was.

Q. Did Mr. Hume come and talk to you?

A. He did.

Q. Could you tell me what he said and what you said at that time?

A. I don't believe I can tell you the exact words, no.

Trial Examiner Myers: Tell us all that you remember.

The Witness: Well, the gist of the talk was the reason for my refusing to sign with the Teamsters Union, or my refusal to pay dues to the Teamsters Union, and also the threatened boycott or action that they would take in case we did not sign.

Q. (By Mr. Jennings): What did you say?

A. I still refused to sign. I told them that I would not sign.

Q. Had you, prior to that time, joined the FTA-CIO?        A. Yes, I had.

Q. About when was that?

A. I believe it was in October some time, when I signed the pledge card with the CIO.

Trial Examiner Myers: What year?

The Witness: I beg your pardon?

Trial Examiner Myers: What year?

The Witness: 1945.

Q. (By Mr. Jennings): Did you wear a CIO Union button?

(Testimony of Irwin C. Heagle.)

A. I know what you mean. I am just trying to think. I believe I did at that time. I am not sure.

Q. Did you make any statement to anyone publicly that you had joined, signed up?

A. Yes.

Q. Where did you make that statement?

A. Well, I believe I made the statement to Mr. Hume and to the members there, and—I think I know what you are referring to, but I just don't know how to answer that, because I think you misunderstood me on that statement. [86]

Q. Can you tell us just what you said?

A. Can I answer that this way?

Q. Yes, go ahead.

A. At a meeting called by the AFL, Mr. King asked me—that is, I had the floor, and I believe he accused me of being in the CIO, or something like that, or signing with the CIO, and I told him I had not yet. That is the statement I made. I had not yet.

Q. Thereafter you did?

A. I did after that, yes.

Q. And you say that you told Mr. Hume that you had signed up?      A. I did.

Trial Examiner Myers: Which Mr. Hume?

The Witness: Mr. R. G. Hume.

Trial Examiner Myers: Every time you refer to Mr. Hume, you mean Mr. R. G. Hume?

The Witness: That is right.

(Testimony of Irwin C. Heagle.)

Mr. Jennings: I think it is true, Mr Examiner, that Mr. R. G. Hume is the only Mr. Hume that is active in the management of the Company. I would like to be corrected if that is not so.

Mr. St. Sure: That is correct, yes.

Trial Examiner Myers: All right. I just do not want to keep asking the same question. We have it cleared up now. [87]

Q. (By Mr. Jennings): I call your attention to the 20th of November, 1945. Was it Tuesday?

A. That is right.

Q. Do you recall that you went to work that day?

A. I did.

Q. About what time in the morning?

A. About 6:00 o'clock in the morning.

Q. After you came to work, did you see any group of individuals in front of the plant?

A. I did. I saw—well, we call them “pickets”, men bearing banners blocking the main gate of the plant, in front of the main gate to the plant.

Q. What pickets were they?

A. AFL.

Q. During the morning, did you have any discussion with Mr. R. G. Hume?

A. I did.

Q. At which other employees were present?

A. I did.

Q. Where did that discussion or meeting take place?

A. In front of the boiler room.

(Testimony of Irwin C. Heagle.)

Q. You are employed in the boiler room?

A. I am.

Q. Is the boiler accessible without going into the plant?           A. Yes.

Q. Who attended this meeting in the boiler room, Mr. Heagle?

A. It wasn't in the boiler room. It was outside the boiler room.

Q. It was outside the boiler room?

A. Outside the boiler room.

Q. Who attended this meeting?

A. Mr. Hume and Mr. Birchall.

Q. What is his position?

A. I believe he is assistant to Mr. Hume.

Mr. Birchall: General Manager.

Trial Examiner Myers: Will you please spell it?

Mr. Birchall: Thomas D. Birchall, B-i-r-c-h-a-l-l.

Q. (By Mr. Jennings): What employees were present at the meeting?

A. You wish me to name them?

Q. No, just by group.

A. The warehouse group, and most of the front end crew, the regular workers.

Q. When you say the "front end crew", what do you mean by that?

A. I mean the cook room, canning department, cutting department, and receiving.

Q. All men employees?           A. Yes.

Q. And regular employees?           A. Yes. [89]

(Testimony of Irwin C. Heagle.)

Trial Examiner Myers: About how many were there at that time?

The Witness: Between 20 and 30, I believe.

Q. (By Mr. Jennings): What happened at that gathering?

A. Mr. Hume had a list in his hand. The AFL had demanded that we release—they would release the spinach, that is, deliver the spinach to the plant.

Trial Examiner Myers: What was that?

Would you read the answer?

(The answer was read.)

Trial Examiner Myers: What does that mean?

The Witness: I think you misunderstood me there. The list was—well, we should be fired or laid off before they would release the spinach to the plant.

Trial Examiner Myers: Who is “they”?

The Witness: The AFL.

Trial Examiner Myers: What do you mean “release”? You mean, deliver spinach?

The Witness: Well, they drove it away from the plant and took it down to one of the trucking contractors. I suppose there was danger of it being spoiled, and that was the only reason it would have been released, provided he laid all of us off.

Mr. Jennings: Will you mark that Board’s Exhibit 9 for identification, please?

(Thereupon the document above referred to was marked Board’s Exhibit No. 9 for identification.)

(Testimony of Irwin C. Heagle.)

Trial Examiner Myers: What did Mr. Hume say? Was that what you were going to bring out?

Mr. Jennings: I was going into that, Mr. Examiner.

Q. (By Mr. Jennings): I show you this letter, which is Board's Exhibit 9 for identification. Is that a copy of the letter which Mr. Hume had there?

A. No. Mr. Hume's was written in pencil, the list.

Trial Examiner Myers: Is that a copy? That is typewritten. Is that a copy?

The Witness: Why, the list that was handed to me was just a list of the names on a sheet of paper.

Trial Examiner Myers: Oh. All right.

Mr. Jennings: May it be stipulated, counsel, that Board's Exhibit 9 is a copy of a letter received by the Company?

Mr. St. Sure: That is correct, supplied to the Board by the Hume Company, at the Board's request.

Trial Examiner Myers: Do you so stipulate, Mr. Tobriner?

Mr. Tobriner: Upon the statement of Mr. St. Sure, yes. [91]

Trial Examiner Myers: You, Mr. Edises?

Mr. Edises: Yes.

Trial Examiner Myers: Thank you.

Q. (By Mr. Jennings): Were the names listed on Board's Exhibit 9 the names that were on this list which Mr. Hume had?

A. There are a few there that I cannot place,

(Testimony of Irwin C. Heagle.)

and there is one that is misstated. That is Harley Cruikshank. There was no such man there. That was Freischneckt, was the man's name.

Mr. Jennings: I will offer Board's Exhibit 9 in evidence.

Trial Examiner Myers: Any objection, gentlemen?

Mr. St. Sure: No objection.

Mr. Edises: No objection.

Mr. Tobriner: No objection.

Trial Examiner Myers: There being no objection, the letter is received in evidence, and I will ask the Reporter to please mark it as Board's Exhibit 9.

(The document heretofore marked Board's Exhibit No. 9 for identification was received in evidence.)

## BOARD'S EXHIBIT No. 9

[Letterhead Cannery Workers' Union,  
Local No. 22382]

November 20, 1945

G. W. Hume Company  
South Front Street  
Turlock, California

Attention Mr. Ray Hume

Dear Sir:

This is to notify you that the following, who are

(Testimony of Irwin C. Heagle.)

employees of your company, are suspended from membership in Federal Labor Union #22382:

H. F. Frazier	Fred White
Earnest Bishop	Carl P. Peterson
Harley Cruikshank	William J. Ely
J. Boyd McShane	Clyde Faddis
Nino Lombardo	Bob White
Arthur Berry	Clifford Luther
Peter Bjorklund	Neal Watts
Harold Dillard	G. J. Bobb
Harry Pierson	A. Thiessen
Archy Miller	William Wolfe
J. F. Breshears	George Wright
Verdeen Hartvickon	I. C. Heagle
Willis Thompkins	William Rogers
Ross Wilkinson	

We are requesting their dismissal of this date.

Very truly yours,

[Seal]     /s/ H. C. TORREANO,  
Representative.

HCT/d

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Q. (By Mr. Jennings): Will you tell me what Mr. Hume said to the employees who were assembled there, Mr. Heagle?

A. He told us that he would have to lay us off temporarily, and then he mentioned—I believe there was a little said after that about “stick around.”

Q. Did he tell you why he had to lay you off?

A. Yes. For the very reason I stated a while back, so as to get the spinch released.



(Testimony of Irwin C. Heagle.)

Q. Released by whom?

A. By the Teamsters.

Q. Did you read the list of names to the employees while you were there?      A. I did.

Q. Did you read the correct names of the employees as you understood it?      A. I did.

Q. You mentioned that one of the employees was misnamed?

A. Yes. I think there were several of them that were misspelled on there, but I am not certain. That is, on that list.

Q. Could you indicate the names that were misspelled, Mr. Heagle? Tell us what the correct name was, as you read it.

A. Well, these names are all spelled right here, but on the list, I remember making the remark that some of them—the list was made up in hurry.

Q. Will you look at that and see?

A. Yes. This "J. Boyd McShane" should be McCamey. [93]

Q. Spell that.      A. M-c-C-a-m-e-y.

Trial Examiner Myers: You say Harley Cruikshank should be Harley——

The Witness: Freischneckt.

A. (Continuing) I believe that is all.

Q. (By Mr. Jennings): Do you see Peter Bjorklund here?      A. Yes.

Q. What is his correct name?

A. Oh, yes. The first name is Vidor, V-i-d-o-r. I do not just exactly remember what it is.

Q. Did you say anything at this gathering in front of the boiler room, Mr. Heagle?

A. Yes. I reminded Mr. Hume that he was lay-

(Testimony of Irwin C. Heagle.)

ing himself open to unfair labor practice charges.

Q. Did he make any answer to that?

A. Yes. He said he would have to take that chance.

Q. Was anything said about the spinach? Was there any discussion about getting the spinach?

A. Yes, there was. Several of the boys—we offered to go down and get the trucks, if he would give the word, and get the spinach, and I believe Mr. Birchall even agreed to drive one of the trucks at the time. But, we did not get it.

Trial Examiner Myers: When you said he would give the “word,” you mean Mr. Hume?

The Witness: That Mr. Hume would give the word, yes.

Trial Examiner Myers: What did he say to that?

The Witness: I received no answer.

Q. (By Mr. Jennings): Did you ask whether or not you were discharged?

A. Not at that time.

Q. Was there any discussion of discharge at that time, discharge slips?

A. All that was said at that time was that we were temporarily laid off.

Q. Were you given any discharge slip or anything to indicate the reason for your lay off?

A. No, we weren't.

Q. Did you ask for any?

A. I asked for one, yes.

Q. Whom did you ask?

A. Mr. Hume.

Q. What did you say?

(Testimony of Irwin C. Heagle.)

A. I asked him if he could give us a slip showing why we were laid off, and he said he could not.

Trial Examiner Myers: At this meeting that you had?

The Witness: Right there at that time, yes sir.

Q. (By Mr. Jennings): On Wednesday, November 21—strike that. [95] Did you leave the plant then, after this meeting? A. We did.

Q. On Wednesday, the 21st of November, did you come back to the plant? A. We did.

Q. At what time in the morning?

A. 8:00 o'clock.

Q. How many employes came back?

A. 46, approximately.

Q. Did you go into the plant or did you go across the street?

A. We gathered across the street, and then went into the plant.

Trial Examiner Myers: Were the pickets there that day, or as you call them, "pickets"?

The Witness: They were, yes sir.

Trial Examiner Myers: There were people there with signs that you call "pickets"?

The Witness: No, there was no signs out that morning.

Trial Examiner Myers: On the 20th, there were people there with signs?

The Witness: Yes, sir.

Trial Examiner Myers: On the 21st, there were just people there but no signs, is that it?

(Testimony of Irwin C. Heagle.)

The Witness: Representatives there from the AFL at that time, people that—well, out of town people, in other words.

Trial Examiner Myers: On the 21st?

The Witness: On the 21st, yes sir.

Trial Examiner Myers: About how many?

The Witness: I could not name the exact number. There was around nine or ten, I believe.

Q. (By Mr. Jennings): Were there women in this group of 46, or were they all men?

A. No, there were women in it.

Q. When you went to go through the gate, which group went first?

A. We had a few ex-service men, and the ex-service men and the women went first.

Q. Did anybody get through into the plant?

A. Yes, the women and these ex-service men got through.

Q. Did the regular workers get through?

A. We got as far as the inside door.

Q. What happened there?

A. There was a line thrown across. They linked elbows.

Q. Who linked elbows?

A. The AFL linked elbows and blocked the entrance.

Q. So you did not get in?

A. No. That is as far as we got.

Q. What did you do then? [97]

A. Called for Mr. Fordham.

Q. The Superintendent? A. Yes.

(Testimony of Irwin C. Heagle.)

Q. Who did you ask to get Mr. Fordham?

A. The watchman.

Q. Did he get him?           A. He did.

Q. Did Mr. Fordham come out?

A. He did.

Q. Did you talk to Mr. Fordham?

A. I did.

Q. What did you say to him?

A. I told him we was reporting for work, and I believe my exact words were, "What is the verdict"? And he answered that we would have to clear ourselves with the AFL in order to be able to work, and I believe—I know I said—I said "Then that means pay dues and back dues"? And he says, "You haven't got no job," or "I guess you haven't got a job unless you do."

There was a lot of excitement there at the time. I don't just remember the words.

Trial Examiner Myers: What was the last part of that answer?

(The last part of the answer was read.)

Q. (By Mr. Jennings): About how many employees were there at the time this statement was made by Mr. Fordham?

A. Well, the original 46, and then several of the employees that were inside, quite a bunch of the employees that were inside were standing inside of the door.

Q. I will show you the appended page attached to the complaint in this proceeding, and ask you to look at the list of employees there, and tell me

(Testimony of Irwin C. Heagle.)

which of those employees, to your knowledge, were not present, and which were present.

A. This Archy Miller was not present at that time. He was laid up.

Q. You did not see him there?

A. No. Thomas Broll was not there at that time, either.

Trial Examiner Myers: What is that?

The Witness: Tom Broll. I do not remember seeing him.

Trial Examiner Myers: How do you spell that?

The Witness: B-r-o-l-l.

A. (Continuing) And I don't know Faddis well enough to know whether he was there or not.

Q. That is F-a-d-d-i-s? A. Yes.

Trial Examiner Myers: Were all the rest there?

The Witness: They were.

Q. (By Mr. Jennings): By the way, Mr. Heagle, do you know where Oscar Johnson is now?

A. In the service. [99]

Q. What branch of the service?

A. That I don't know.

Mr. Tobriner: Just a minute, Mr. Jennings. Is that a name on this Exhibit No. 9 that you are showing to him?

A. No, it is not on Exhibit 9.

Mr. Tobriner: You are showing him a list on the complaint?

Mr. Jennings: Attached to the complaint, yes.

Q. (By Mr. Jennings): Was Mr. Johnson a regular or a seasonal worker, Mr. Heagle?

(Testimony of Irwin C. Heagle.)

A. He was a warehouse worker, and I believe he would be classified as a regular, though without much seniority; a new man there, practically a new man there. He had not been there very long.

Q. Was Mr. Johnson present on November 28th at this meeting in front of the boiler room?

A. He was.

Q. To your knowledge, had Mr. Johnson joined the FTA-CIO?

A. Yes. That is, he signed—my knowledge is that he signed a pledge card, that is as far as my knowledge goes.

Q. Had he also refused to pay dues to the AFL?

A. He had.

Q. He was not named on this list of names that you read, was he?

A. Yes. Every man who worked in the warehouse was on that list. Not the supervisory employees. Every man outside of the supervisory employees was named.

Q. After you talked to Mr. Fordham in front of the plant, what did you do?

A. I beg your pardon, I was not in front. You mean, on the 21st?

Q. Yes.

A. That was in front of his office.

Q. In front of his office?

A. Inside the gate of the plant.

Q. What did you do then, after he had told you what you have testified about?

(Testimony of Irwin C. Heagle.)

A. We left and went home, that is, went across the street and gathered there for a while, but we left the plant.

Q. Were any company officials across the street when you went over there?

A. Yes, Mr. Hume and Tom.

Trial Examiner Myers: Tom who?

The Witness: Tom Birchall.

Q. (By Mr. Jennings): Did you hear any discussion about the matter of discharging the employees?

A. Yes, there was quite a bit of discussion going on, and Mr. Torreano of the Teamsters Union was there at the time, and Mr. Hume made the remark that Mr. Torreano had agreed to take all the responsibility.

Q. What did Mr. Torreano say?

A. Well, I believe he answered that he had, because he smiled all over his face.

Mr. Tobriner: Objection. Move it be stricken.

Trial Examiner Myers: Strike it out.

Did he say anything?

The Witness: There is nothing definite that I could say, no.

Trial Examiner Myers: Did he do anything?

The Witness: Yes. He laughed and shook his head when Mr. Hume made the remark.

Trial Examiner Myers: Which way did he shake his head, up and down or sideways?

The Witness: As though he meant, yes.

Q. (By Mr. Jennings): After that, did you leave?  
A. We did.



(Testimony of Irwin C. Heagle.)

Q. Were you thereafter re-employed by the company?      A. On February 7, 1946.

Q. You received a letter offering you reinstatement?      A. I did.

Q. Did you then go to work on February 7th?

A. I did.

Q. Have you been employed since? [102]

A. I was employed for 11 days, and then, due to the fact that there was no more work, I was off until the—I cannot remember the exact date. I would have to get that from Mr. Hume. Before spinach started.

Q. At any rate, you went back on your regular job, and you have been back on your regular job since that time?      A. I have.

Q. Since February 7th?

A. With the exception of the time that I was off.

Q. So long as there was a job for you to do, you did it?      A. That is correct.

Q. And nobody else was working on your job?

A. No.

Mr. St. Sure: I wonder, Mr. Trial Examiner—I am not inquiring because I am hungry, but I was wondering what your schedule would be? I have some telephone calls to make during the noon hour.

Trial Examiner Myers: Do you want to recess now for lunch?

Mr. St. Sure: I thought it might be helpful.

Trial Examiner Myers: Have you any objection, Mr. Jennings?

(Testimony of Irwin C. Heagle.)

Mr. Jennings: No, indeed. I was hoping somebody would ask. [103]

Trial Examiner Myers: We will adjourn now until 2:30. You are excused, Mr. Heagle, until 2:30.

(Witness excused.)

(Thereupon, a recess was taken until 2:30 o'clock p.m.)

### After Recess

(Whereupon the hearing was resumed, pursuant to the recess, at 2:30 o'clock p.m.)

Trial Examiner Myers: Are you ready, gentlemen?

Mr. Jennings: Ready.

Trial Examiner Myers: Will you take the stand, please, Mr. Heagle?

### IRWIN C. HEAGLE

a witness called by and on behalf of the National Labor Relations Board, having been previously duly sworn, was examined and testified further as follows:

### Direct Examination

(Resumed)

Trial Examiner Myers: Have you any further questions of Mr. Heagle?

Mr. Jennings: Yes, I have, Mr. Examiner.

Trial Examiner Myers: You may proceed.

Q. (By Mr. Jennings): Mr. Heagle, are you aware of the fact that the Company signed a con-

(Testimony of Irwin C. Heagle.)

tract with the Teamsters on or about March 25th?

Mr. Tobriner: The contract speaks for itself, Mr. Jennings. Do not characterize it, please. It is with the Teamsters.

Q. (By Mr. Jennings): I will show you Board's Exhibit 8——

Mr. Tobriner: I am going to ask, Mr. Trial Examiner—the contract will speak for itself. Mr. Jennings has characterized this contract in language that is completely misleading, I think.

Trial Examiner Myers: Reframe the question.

Q. (By Mr. Jennings): Were you aware of the fact that the company had signed a contract with the labor organizations who are named on Board's Exhibit 8?           A. I was.

Q. Was any notice posted in the plant advising the employees that such a contract had been signed?

A. Not to my knowledge.

Q. Have you ever seen such a notice?

A. I have not.

Q. Since March 25th of 1946, have you been approached to join the AFL union named in that contract?           A. I have.

Q. About when was that?           A. Last week.

Q. By whom were you approached?

A. Mr. Evanson.

Q. Do you know his full name?

A. E-v-a-n-s-o-n. I cannot think of it right off.

Q. What labor organization does he represent?

A. Represents the AFL.

Q. Where did he talk to you?

A. In the boiler room. [106]

(Testimony of Irwin C. Heagle.)

Q. Were you working? A. I was.

Q. What did he say to you?

A. He asked me if I already signed the slip, and I told him no.

Q. What did he ask you to sign?

A. A clearance slip.

Q. Did you sign it? A. I did not.

Q. Mr. Heagle, during this year, the year of 1946, have representatives of the AFL or of the Teamsters union been given access to the company's plant in Turlock? A. They have.

Q. Have you seen them in the plant?

A. I have.

Q. Talking to the employees during working hours? A. I have, yes, sir.

Q. Has that been true since March 1st of 1946?

A. It has.

Q. Have representatives of any other labor organization been in the plant talking to the employees? A. They have not.

Mr. Jennings: Would it be possible, counsel, to stipulate so as to avoid repetition of the question, that representatives of the charging union, the FTA-CIO have been denied access to the company's plant?

Mr. St. Sure: I do not know that that is the fact. As soon as Mr. Hume or Mr. Birchall return, I will be very glad to stipulate with you, but I do not know what the situation has been from the period March 1st to March 15th. Prior to March 1st, and I assume since the 25th of March of this

(Testimony of Irwin C. Heagle.)

year, the AFL representatives have been admitted to the plant. In the interval between those dates, I am not sure.

Mr. Jennings: I am thinking now about the denial of access to the charging union, Mr. St. Sure.

Mr. St. Sure: I can stipulate that the charging union has not had admission to the plant. I would like, however, to consult Mr. Hume and Mr. Birchall to be sure I am correct. I say I stipulate that, because I assume that during the period the contract was operative, the AFL had the only right of access as the representative of the workers under the contract. Since this March 25th document was signed, I assume the same situation was viewed as correct by the plant. The reason I mention the period from March 1st to 25th is because during that period we had asked the members of the C. P. & G. to bar the representatives of both unions from the plant. I think that probably would add up to the lack of access by the FTA-CIO, but I am not sure enough of it to want to stipulate without checking.

Q. (By Mr. Jennings): From March 1st to March 25th, Mr. Heagle, were you employed?

A. I was. [108]

Q. In the Turlock plant. During all of that time, or just during part of it?

A. I cannot tell you exactly. I do not remember just exactly when I was called back to work this last time. I was called back just about a week or so after they started spinach, and I do not remem-

(Testimony of Irwin C. Heagle.)

ber the exact date. I could find it out by my time cards, but I do not have any idea when it was.

Q. Were you working on the 25th of March, when this contract, Board's Exhibit 8, was signed?

A. Yes.

Q. Had you been working prior to that?

A. Yes, a few days.

Q. For about how long? A. A few days.

Q. Do you know whether or not representatives of the AFL or of the Teamsters were in the plant during those days? A. Yes, they were.

Mr. Jennings: I have nothing further.

Trial Examiner Myers: Have you any questions, Mr. St. Sure.

Mr. St. Sure: I have simply one question.

#### Cross-Examination

By Mr. St. Sure:

Q. Mr. Heagle, at the time that the court action was filed that you referred to as resulting in an injunction for a period of some days last August, you were President of an organization known as the "Cannery & Food Process Workers Union of the Modesto Area," is that correct?

A. Acting as President.

Q. Acting President? A. Temporarily.

Q. That organization in turn was chartered by the Cannery & Food Process Workers Council of the Pacific Coast? A. That's right.

Q. Was the local union that you were Acting President of, or the Food Process Workers Council,

(Testimony of Irwin C. Heagle.)

or either of them, affiliated with either the AFL or the CIO?      A. At that time, no.

Q. Was the Food Process Workers Council of the Pacific Coast a subsidiary of or an auxiliary of the Seafarers' Union, the International Seafarers' Union of the AFL?

A. It was for a short time, but I would rather that somebody who knows more about that than I do answer that, because I wasn't——

Q. There was some confusion at that time as to whether you were part of the AFL, and you subsequently went independent, I believe?

A. That's right.

Q. But at that time you were not a member of, nor was that Union nor was that Council affiliated with the CIO?      A. It was not. [110]

Mr. St. Sure: I have no other questions.

Trial Examiner Myers: Mr. Tobriner?

Q. (By Mr. Tobriner): Mr. Heagle, you have been a member of Local 22382 I think for some time?      A. I have.

Q. How many years?

A. I believe I joined in 1939.

Q. You were an active member of the union, were you not?      A. From 1943 on, yes.

Q. You were a member of the Executive Committee of 22382, were you not?

A. Since the latter part of 1943.

Q. You participated in discussions with the Executive Committee, did you not?

A. I did at that time.

(Testimony of Irwin C. Heagle.)

Q. You knew, did you not, that 22382 took the position, at least in the meetings of the Executive Committee, that the contract which was called the "Green Book Contract" was a union ship contract?

A. Not necessarily.

Q. You deny that you took that position?

A. I took the position—I believe it is called "preferential hiring." [111]

Q. Do you say they did not take the position that a person should be discharged under that contract if he did not pay dues to 22382?

A. Well, naturally we figured that should be that way.

Q. Sure. In other words, you did take the position that the person who did not pay dues to 22382 should be discharged?

A. We may have taken that position, but I do not believe it was ever enforced, to my knowledge.

Q. Aside from whether it was enforced——

Trial Examiner Myers: What do you mean by "take the position?"

Q. (By Mr. Tobriner): Didn't the Local tell the employers that it believed that a person who did not pay dues to 22382 should be discharged?

A. You will have to ask that of somebody else. I never said it myself, and never heard it in that many words.

Q. Didn't you know that there were discharges of people who did not pay dues under the Green Book Contract?      A. Not to my knowledge.



(Testimony of Irwin C. Heagle.)

Q. Didn't you know that in Oakdale, in the spring of '44, there were discharges of persons who did not pay dues?

A. I never heard of the Oakdale plant.

Q. You never heard of anybody being discharged for non-payment of dues?

A. I heard of people being discharged for non-payment of dues to the Teamsters since they came in.

Q. No, prior to the summer of 1945.

A. That I wouldn't be prepared to argue.

Q. I am not asking you to argue. We have lawyers for that. I am asking you whether you do not know of your own knowledge that there were people discharged.

A. Not to my knowledge.

Q. You never heard that?

Mr. Edises: Just a moment. I object to that as already asked and answered several times.

Mr. Tobriner: No. He answered it once the other way.

Trial Examiner Myers: Overruled.

Will the reporter please read the question?

(The question was read.)

A. In connection with the Oakdale plant, no, I never have.

Q. In connection with any plant.

A. As far as any plant down there, the Hume plant is all I am interested in.

Q. I am asking you, any plant?

Mr. Jennings: Object to counsel asking about any plant except the Hume plant.

(Testimony of Irwin C. Heagle.)

Mr. Tobriner: Let me ask you——

Mr. Jennings: I do not object upon the ground it is irrelevant, because obviously this witness does not know what happened at any other plant. [113]

Trial Examiner Myers: That is right.

Q. (By Mr. Tobriner): You were a member of the Executive Council, Mr. Heagle?

A. I was.

Q. Didn't the Executive Council pass an action of the union with regard to other plants besides Hume? A. They did.

Q. So you know of certain things regarding other plants?

A. I wasn't present at all the executive meetings.

Q. I am going to ask you whether at any meeting of the Executive Council, the matter ever came up as to what should be done with people who did not pay dues at any other plant? Did that ever come up?

A. I do not remember.

Trial Examiner Myers: While you were present.

The Witness: I do not remember, myself.

Q. (By Mr. Tobriner): Do you remember the case of Wes King?

A. I remember Wes King.

Q. Do you know anything about his being let out because of non-payment of dues?

A. I didn't understand that was the reason he was let out.

Q. So you don't know of any case where that was done?

(Testimony of Irwin C. Heagle.)

A. Not to my knowledge, not definitely, because if the case was something I was interested in, I might remember it. But, I don't remember of any case. [114]

Q. You are not prepared to go as far as to say it would not have happened?

Mr. Edises: Now, Mr. Examiner——

Mr. Tobriner: I am cross-examining, Mr. Edises.

Trial Examiner Myers: Let Mr. Edises state his objection first.

Mr. Edises: I will object to this repeated asking of the same question over and over again.

Mr. Tobriner: The witness has varied his answers, Mr. Trial Examiner. I want to get the truth, if I can.

Trial Examiner Myers: Suppose that he said it might never have happened, as you want him to say. What probative value would it have?

Mr. Tobriner: He has made the statement that——

Trial Examiner Myers: He says he does not remember.

Mr. Tobriner: But on his direct examination he took the position that the union did not contend that they had a union shop contract which required the discharge of persons who did pay dues. I am now demonstrating, if I can, that that is not the accurate statement.

Trial Examiner Myers: He says he does not remember.

Mr. Tobriner: He does not remember. Well, let it go at that.

(Testimony of Irwin C. Heagle.)

Trial Examiner Myers: I will sustain the objection.

Q. (By Mr. Tobriner): You mentioned that Mr. Torreano and Mr. Brown visited the Hume plant in the spring of 1945. You said on your direct examination that they said you should affiliate with the Teamsters, isn't that right? A. Yes.

Q. You never did affiliate with the Teamsters?

A. No, never did.

Q. Did you continue your membership in 22382? A. Not after that time.

Q. You did not? A. I did not.

Q. You dropped your membership in 22382 after the spring of 1945?

A. After June of 1945.

Q. As a matter of fact, did Mr. Torreano tell you or ask you to go into the Teamsters, or did he ask you to continue your membership in 22382?

A. As an affiliate of the Teamsters.

Q. Please answer the question.

A. He asked us to go in. In other words—well, at that time when they first come down there, they did not admit it was 22382. They said it was the Teamsters direct, that it was ordered by Mr. Green back in Washington, to affiliate with the Teamsters.

Q. They mentioned that you should go into some other organization of the Teamsters, is that it?

A. No. They mentioned that we should affiliate with the Teamsters.

Q. Did they ask you to take your membership out of 22382 and go into a new organization?

A. No.

(Testimony of Irwin C. Heagle.)

Q. What did they ask you?

A. Asked us to affiliate with the Teamsters.

Q. The whole 22382, as a whole?

A. I expect so, yes.

Q. Was there a meeting called for that purpose?

A. A meeting in our plant.

Q. To take a vote on that?

A. No, they told us we was not entitled to a vote. We asked for a vote, and they told us we were not entitled to it.

Q. They asked you to affiliate, although no vote was taken? A. That is right.

Q. What do you mean by "affiliate?"

A. Well, the way I understood affiliation, pay per capita tax to the Teamsters International.

Q. But there was no local they mentioned, of the Teamsters? A. No. You mean——

Q. Local.

A. Well, at that time, no, I don't think so.

Q. So your position is that Mr. Torreano and Mr. Brown came out there and asked you to pay a per capita tax direct to the International Brotherhood of Teamsters, there not being a local made up of the Teamsters? [117]

Trial Examiner Myers: No, he did not testify that.

Mr. Tobriner: Let me put it this way:

Q. (By Mr. Tobriner): Your position is, then, that they asked you to pay per capita tax?

Trial Examiner Myers: He did not say. You asked him what he meant by "affiliation," and he

(Testimony of Irwin C. Heagle.)

explained it to you. He did not say that either one of those two gentlemen told him to pay per capita tax.

Mr. Tobriner: Let me get that clear.

Q. (By Mr. Tobriner): Are you discussing now the time that Mr. Torreano and Mr. Brown came out there? A. That's right.

Q. You are telling me now what they asked you to do?

A. No. I did not tell you that they asked us to pay per capita tax. I said I understood the definition of the word "affiliate" was to affiliate so as to pay per capita tax.

Q. But they said the word "affiliate" with the International Brotherhood of Teamsters?

A. That is right.

Q. And you understood that that was to pay per capita tax to the International Brotherhood of Teamsters?

A. That has always been my understanding.

Q. Did they say, or did you understand that 22382 was not to continue? [118]

A. At that time, yes.

Mr. Edises: Just a moment. I want to object to the question, and ask that the answer be stricken on the ground that it is compound.

Mr. Tobriner: Let us split it up.

Trial Examiner Myers: Do you withdraw your question?

Mr. Tobriner: I withdraw the question.

Trial Examiner Myers: Strike out the answer, then.

(Testimony of Irwin C. Heagle.)

Q. (By Mr. Tobriner): Did they say that 22382 was not to continue?

A. I do not believe there was anything mentioned of any kind, whether it was to continue or not to continue at that time.

Q. You signed a clearance slip around that time, I think you testified?

A. It was after that.

Q. After that time? A. Yes.

Q. When was that, approximately?

A. Well, as I said before, just before the start of the peach season.

Q. With what union was that clearance slip signed?

A. That clearance slip said "22382."

Mr. Tobriner: Have we a copy of that clearance slip?

Mr. Jennings: I think I have a couple here.

Mr. Tobriner: May I have them?

(Mr. Jennings hands slip to counsel.)

Q. (By Mr. Tobriner): I show you a yellow piece of paper entitled "Clearance Card," and ask you to look at it, please.

A. That is one of their clearances.

Q. That is one of them? A. Yes.

Mr. Tobriner: Thank you.

I am going to ask that this be introduced into the record as AFL Exhibit No. 1.

Trial Examiner Myers: Any objection?

Mr. Jennings: None.

(Testimony of Irwin C. Heagle.)

Trial Examiner Myers: There being no objection, the paper is received in evidence, and I will ask the reporter to please mark it as AFL Exhibit 1.

Of course, you do not want any of the handwriting in?

Mr. Tobriner: No, just the form, Mr. Trial Examiner.

(The document referred to was marked AFL Exhibit No. 1 and was received in evidence.)

Q. (By Mr. Tobriner): Were your dues then deducted in favor of the union named on the yellow slip? A. They were not.

Q. They were not deducted? A. No.

Q. But you signed the clearance slip? [120]

A. I signed the clearance slip.

Q. Did you pay dues to 22382?

A. I did not.

Trial Examiner Myers: You mean, after that date?

Mr. Tobriner: After that date.

The Witness: I did not.

Q. (By Mr. Tobriner): Did you receive any notice to appear before the Executive Board of 22382? A. I did not.

Q. I show you a carbon copy of a letter dated December 8, 1945, and addressed to Irwin C. Heagle, 617 East Olive Street, bearing the typed signature of "H. C. Torreano, Representative," and I ask you to look at that letter and see if it refreshes your recollection?



(Testimony of Irwin C. Heagle.)

A. I do not remember of getting a letter of that kind.

Q. You do not?           A. I do not.

Q. This is your address, is it not, 617 East Olive, Turlock, California?           A. That's right.

Q. Do you have any recollection of not getting any such letter?

A. I never received such a letter, to my recollection.

Q. You knew, did you not, that the contract that was signed between the canners and the AFL was signed in the name of 22382?

Trial Examiner Myers: What contract?

The Witness: What contract?

Mr. Tobriner: The green contract.

Mr. St. Sure: I think, Mr. Trial Examiner, for the record perhaps it would help if I would outline the procedure of the manner in which the Green Book Contract or the so-called "Master Contract" was signed and annually ratified.

Trial Examiner Myers: Can you do it in the form of a stipulation?

Mr. St. Sure: The contract itself was signed by officials of the C. P. & G. and by representatives of the American Federation of Labor, and then each member plant and each local union signed the certificate adopting the contract to apply to the individual plants, so the Master Contract itself does not show the listing of the individual locals or the individual plants, but the acceptances that I have outlined and the form that I have indicated was separately executed each year.

(Testimony of Irwin C. Heagle.)

Trial Examiner Myers: Can we accept that statement?

Mr. Tobriner: So stipulated.

Trial Examiner Myers: Do you stipulate?

Mr. Jennings: So stipulated, Mr. Examiner.

Trial Examiner Myers: Do you so stipulate, Mr. Edises?

Mr. Edises: I believe the statement is correct. I will so stipulate.

Mr. Jennings: I might point out that the forms that were signed by the individual local and the individual company appear on pages 39 and 40 of the Green Book Contract.

Mr. St. Sure: That is the form in blank that appears in the contract.

Mr. Jennings: I ask that that be made a part of the stipulation.

Trial Examiner Myers: Very well.

Do you so stipulate?

Mr. Edises: So stipulate.

Mr. St. Sure: For the employers, so stipulate.

Trial Examiner Myers: Do you?

Mr. Tobriner: I so stipulate.

Trial Examiner Myers: Do you, Mr. Jennings?

Mr. Jennings: Yes.

Q. (By Mr. Tobriner): Did you know this contract had been signed by 22382 in the manner we have stipulated?

A. I was not a member of the Executive Board at the time that contract was signed. I understood to that effect, but I don't know.

(Testimony of Irwin C. Heagle.)

Q. Did you know the dues collection and check-off dated August 21, 1944, was signed by Cannery Workers Union, 22382, by R. M. Tomson?

A. Yes.

Q. Did you know that—strike that.

Did you, however, tell the employees at the Hume plant that they did not have to pay dues to 22382?

A. I did, yes. [123]

Q. You did not pay dues yourself?

A. I did not.

Mr. Tobriner: That is all.

Trial Examiner Myers: Any further questions?

### Redirect Examination

By Mr. Jennings:

Q. Mr. Heagle, were you ever expelled from membership in Local 22382?

A. I never received official notice to that effect.

Q. You say that you never received official notice? A. That is right.

Q. Were you ever told unofficially by a representative of Local 22382 that you had been expelled?

A. I believe Mr. Brown made that remark at one time at the plant.

Q. Approximately when was that?

A. It was some time after June. I don't know just exactly when it was.

Q. Was that before or after you signed the clearance in August of 1945?

(Testimony of Irwin C. Heagle.)

A. I would not be prepared to say just exactly when that was.

Q. Did you ever receive any official notice after that to the effect that you had been expelled?

A. No, I did not. [124]

Q. When Mr. Evans approached you last week, what did he ask you to sign? Did he ask you to sign an application for membership?

A. He asked me to sign a clearance slip.

Q. Just a clearance?           A. That was all.

Q. In the form of AFL Exhibit No. 1?

A. That's right.

Trial Examiner Myers: Are there any further questions?

#### Recross-Examination

By Mr. Tobriner:

Q. Mr. Heagle, you were, as you said, a member of the Executive Council, and I presume as such you were familiar with the constitution and by-laws of Cannery Workers Union Local 22382?

A. Yes, sir.

Q. Do you recognize that book? (Exhibiting book to witness.)           A. Yes, sir.

Q. They are the by-laws of 22382?

A. That is right.

Q. You are familiar with the provisions of the by-laws, particularly with reference to Article XI, "Initiation Fees, Dues and Arrearages?"

A. Very familiar, yes, sir.

(Testimony of Irwin C. Heagle.)

Q. Did you know that Section 1 of Article XI reads:

“... Any member failing to pay dues on or before the 15th day of each month will be fined 50 cents. If the dues are not paid by the 1st of the following month they shall not be allowed to continue working.”

A. Yes, sir.

Mr. Tobriner: May I offer this as Exhibit 2?

Trial Examiner Myers: Any objection?

Mr. Jennings: None.

Trial Examiner Myers: There being no objection, the booklet is received in evidence, and I will ask the reporter to please mark it AFL Exhibit No. 2.

(The document referred to was marked AFL Exhibit No. 2 and was received in evidence.)

Q. (By Mr. Tobriner): You mentioned in your direct examination that Mr. Torreano was the representative of the Teamsters, did you not?

A. I did.

Q. Did you not know that Mr. Torreano was a representative of 22382?

A. That is what Mr. Torreano claimed later on.

Q. He said that, did he? A. Later on, yes.

Q. When you say “later on,” what do you mean?

A. After the first meeting and the second meeting, he claimed he was a representative of 22382.

Q. Which meetings do you refer to now? [126]

(Testimony of Irwin C. Heagle.)

A. The meeting in—I believe it was before the start of the peach season, around the first of August somewhere.

Q. The other season you mentioned prior to that time was in the spring of '45?

A. June of '45.

Q. At that time wasn't Mr. Flanigan Supervisor of 22382? A. He was.

Q. Did Mr. Torreano say he was working under Mr. Flanigan's direction?

A. I did not ask him.

Q. You did not ask him? A. No.

Q. Did he say that?

A. I don't remember whether he did or not. There was so many of them down there at that time, that it is hard to distinguish them.

Q. You don't remember whether he said it or not? A. Not definitely, no.

Q. Do you remember his saying that he was a representative of the International Brotherhood of Teamsters?

A. I do not believe he said so in so many words, but he did say that we were compelled to affiliate with the International Brotherhood of Teamsters.

Q. Aside from that, did he ever say he represented them?

A. I don't believe he did, not as far as I can remember.

Q. There was a meeting in August of '45 at which you said there were representatives of Teamsters present. Could you name who those people were?

(Testimony of Irwin C. Heagle.)

A. Inferring that, they spoke at that time, they naturally inferred that they were representatives of the Teamsters.

Q. Who else was there besides Mr. Torreano?

A. Brown.

Q. Hadn't Mr. Brown been an officer of 22382 prior to this time?

A. He had been, but he had been suspended.

Q. Yes, some time back. Did Brown say he was a representative of the Teamsters?

A. At that time, no.

Q. Was there a third person there, if you remember? Mr. deChristofaro. Would that refresh your recollection?

A. I don't remember whether deChristofaro was there that day or not. I believe he came at a later date.

Mr. Tobriner: That is all.

Trial Examiner Myers: Any further questions, gentlemen?

Mr. Jennings: Just one, so as not to leave the record unclear.

### Redirect Examination

By Mr. Jennings:

Q. Why was Brown suspended from Local 22382?

A. I believe the charge was conduct—something against the [128] best interests of the union, of the local.

Q. What exactly had he done?

Mr. Tobriner: Object to what he had done.

(Testimony of Irwin C. Heagle.)

Trial Examiner Myers: Overruled.

A. I believe he started to work for the so-called "Teamsters" in signing another plant where he was sent to sign the plant for our Local, signing for the Teamsters.

Q. Instead of 22382?

A. Instead of for 22382.

Q. Do you know, Mr. Heagle, whether Local 22382 had received any instructions from President Green of the American Federation of Labor to affiliate with the Teamsters Union? A. Yes.

Mr. Tobriner: Objected to. I move that it be stricken on the ground that instead of asking this witness whether he knew, the best evidence would be the instructions of the AFL to 22382, if that is what you want to get at.

Trial Examiner Myers: Overruled.

Q. (By Mr. Jennings): When did you receive these instructions?

A. I could not tell you exactly. I don't—

Q. What month, about?

A. I don't know exactly. Some time in the early spring of 1945, I believe.

Mr. Jennings: That is close enough.

Trial Examiner Myers: Before this June meeting or after the June meeting?

The Witness: That I would not be prepared to say. I could not just remember whether it was before or after.



(Testimony of Irwin C. Heagle.)

Q. (By Mr. Jennings): Did the local ever affiliate with the Teamsters, to your knowledge, while you were a member of it?

A. Not while I was a member, no.

Q. While you were active in it? A. No.

Mr. Jennings: That is all.

### Recross-Examination

By Mr. Tobriner:

Q. Mr. Heagle, you mentioned that Mr. Brown was suspended by the Union. Is it not a fact that Mr. Brown was thereupon discharged from his job at the cannery where he was working?

A. I believe I heard something to that effect at a later date, yes.

Mr. Tobringer: Thank you.

The Witness: I am not certain.

Trial Examiner Myers: You are excused, Mr. Heagle. Thank you very much.

(Witness excused.)

Trial Examiner Myers: Will you call your next witness, Mr. Jennings? [130]

Mr. Jennings: Mr. Tomson, please.

### R. M. TOMSON

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

### Direct Examination

Trial Examiner Myers: What is your name, Mr. Tomson?

(Testimony of R. M. Tomson.)

The Witness: R. M. Tomson, T-o-m-s-o-n.

Trial Examiner Myers: Where do you live, sir?

The Witness: 511 Waverly Drive.

Trial Examiner Myers: Modesto?

The Witness: Modesto, yes.

Trial Examiner Myers: You may proceed, Mr. Jennings.

Q. (By Mr. Jennings): By whom are you employed, Mr. Tomson?

A. I am a Labor Relations Advisor for various canneries, representing Management.

Q. Did you ever hold any office in Local 22382.

A. I did.

Q. What office?

A. I was Secretary-Treasurer and Business Manager.

Q. For how long?

A. Since July, 1942 to about June, 1945.

Q. Did you ever hold any office in the California State Council of Cannery Unions?

A. I was President of the California State Council.

Q. At what time?

A. About February, 1944 to June, 1945.

Q. Were you a member of the Adjustment Board provided for in the contract between the C. P. & G. and the California State Council of Cannery Unions?

A. Yes, I was.

Q. You say that you ceased to be President of the California State Council in June of 1945?

A. May or June. I do not remember the month.

(Testimony of R. M. Tomson.)

Q. Can you explain to us what happened at that time, Mr. Tomson?

A. The Local Union, of which I was Secretary-Treasurer, was ordered to affiliate with the International Brotherhood of Teamsters, and the membership took a vote and voted against affiliation, and we did not affiliate, so I did not go with them, either, so I was expelled as Secretary-Treasurer of the Local and I just quit as President of the State Council.

Mr. Tobriner: I think the testimony is full of conclusions and opinions, but for the purpose of the record, I move it be stricken.

Trial Examiner Myers: Motion denied.

Q. (By Mr. Jennings): That was Local 22382 that you refer to, was it?

A. Yes, that was the Federal Labor Union.

Q. Chartered directly by the American Federation of Labor?           A. Yes.

Q. Can you tell us very briefly what happened, first of all to the employees? Did they join some other union than Local 22382?

Mr. Tobriner: Object to the form of the question. I do not want these blanket questions to go in, and then a blanket answer.

Trial Examiner Myers: I will sustain the objection.

Mr. Jennings: All right.

Q. (By Mr. Jennings): With what organization did you affiliate after you ceased your affiliation with Local 22382?

(Testimony of R. M. Tomson.)

Mr. Tobriner: Objected to. I do not understand the question. You mean, was Mr. Tomson personally affiliated?

Mr. Jennings: That is right.

Mr. Tobriner: What did he personally do?

Mr. Jennings: That is right.

Mr. Tobriner: If it has any bearing on this case, it is admissible, but I object as to materiality.

Trial Examiner Myers: Are you going to connect it up?

Mr. Jennings: Yes. Part of it is background, Mr. Examiner.

Mr. Tobriner: This is limited to Mr. Tomson's personal experience.

Trial Examiner Myers: Through that organization you got [133] an injunction, is that the point?

Mr. Jennings: That is right.

Trial Examiner Myers: I will overrule the objection. What is the question?

The Witness: I will have to have the question again.

(The question was read.)

A. Well, we were affiliated.

Mr. Tobriner: Pardon me?

Trial Examiner Myers: You yourself? Did you join any other labor organization?

The Witness: The Seafarers' International Union.

Trial Examiner Myers: Affiliated with the American Federation of Labor?

The Witness: Yes.

(Testimony of R. M. Tomson.)

Q. (By Mr. Jennings): How long a period of time were you in the Seafarers?

Mr. Tobriner: Objected to on the ground of immateriality.

Q. (Continuing): Approximately?

A. Approximately two months.

Q. Then——

Trial Examiner Myers: When did you join the Seafarers?

The Witness: About in May, 1945.

Trial Examiner Myers: You got out when?

The Witness: About July sometime.

Trial Examiner Myers: After the issuance of the [134] restraining order, or before?

The Witness: I don't know about this restraining order. This was after I left.

Mr. Tobriner: I move that all be stricken, Mr. Trial Examiner. It has no relationship to anything in this case. It is utterly immaterial and fails to link up.

Q. (By Mr. Jennings): You ceased your affiliation with the Seafarers, I think you said in July of 1945?

A. Yes. I resigned as President of the Pacific Coast Council that was affiliated with the Seafarers International Union.

Q. Then did you join some other labor organization after you left the Seafarers? A. No.

Q. Do you know whether or not the employees who were in the Seafarers Union with you affiliated with some other labor organization? A. Yes.

(Testimony of R. M. Tomson.)

Mr. Tobriner: Objected to on the ground that is a wild conclusion.

Trial Examiner Myers: What do you mean by "employees"? Employees of the Seafarers Union or the employees of some canneries?

Mr. Jennings: The employees of the canneries in the Modesto area who were members of Local 22382.

Trial Examiner Myers: There is no evidence that any [135] employees of canneries were members of it.

Mr. Edises: I think it ought to be brought out on the record.

Trial Examiner Myers: What is this all about, anyway?

Mr. Jennings: Merely to explain what appears to be an uncertainty in the record, Mr. Examiner. The fact of the matter is that there was an Independent bearing the name which Mr. St. Sure has stated in the record.

Mr. Tobriner: So stipulated, there was an Independent Union called "Cannery & Food Process Workers Union". We can stipulate that.

Mr. Jennings: And Mr. Heagle was active in that organization at one time.

Trial Examiner Myers: All right. Do we need to go into that?

Mr. Jennings: We do not need to go into that, if Counsel will stipulate to that.

Mr. St. Sure: We spent about three weeks getting it into a record which is before the Board as a

(Testimony of R. M. Tomson.)

part of the representation hearing. I do not know what that has to do with this. We went all through it for days and days.

Mr. Tobriner: I might suggest, Mr. Jennings, that if the Trial Examiner wants the whole case to go in, I have no objection.

Mr. Jennnigs: The whole representation case, you mean? [136]

Mr. Tobriner: We have no objection to the "R" case.

Mr. St. Sure: I have no objection to it, but it will make a nice, bulky document to carry back across the country.

Trial Examiner Myers: You just want a stipulation about what? What is the stipulation that you want?

Mr. Jennings: That there was an organization known as the "Cannery & Food Process Workers".

Mr. St. Sure: Don't look at me, Mr. Jennings! I don't know anything about it, whether it is alive, dead, Seafarers or Teamsters, or what it is. Don't ask me to stipulate to that one.

Mr. Tobriner: It is not necessary to stipulate, Mr. Jennings. It was stipulated in the Supplemental Decision and Decision Ordering the Election. It is in the record, and it is stipulated, so what is the good of putting material in on that?

Mr. Jennings: All right. I am inclined to agree with Mr. St. Sure that the status of that organization is somewhat difficult to explain at this time.

Mr. St. Sure: That is an understatement.

(Testimony of R. M. Tomson.)

Trial Examiner Myers: I will ask you to proceed with this witness.

Q. (By Mr. Jennings): Mr. Tomson, during the period of time that you held office in Local 22382 and in the California State Council of Cannery Unions, and were a member of the Adjustment [137] Board and set up by the contract, the Master Contract, was there ever at any time a discussion of whether or not the contract required the discharge of employees who failed to maintain membership in the contracting union?

Mr. Tobriner: Will you read that question, please?

(The question was read.)

Mr. St. Sure: May we inquire whether we are going to be a party to this answer?

Trial Examiner Myers: If he says, "No", then that is the end of it. If he says, "Yes", then I will ask him to lay a foundation.

A. It was discussed on many occasions, yes.

Mr. St. Sure: I did not mean in that connection, Mr. Trial Examiner. I meant that I assumed the unions may have discussed it. It may have been discussed at the union meetings, and at the time was tentatively tied into the Adjustment Board. I did not think the question did so.

Mr. Jennings: I intended it that way, Mr. Examiner.

Q. (By Mr. Jennings): Mr. Tomson, was that matter discussed with representatives of the C. P. & G., particularly with Mr. St. Sure or representatives of the C. P. & G.?



(Testimony of R. M. Tomson.)

A. The question had come up on numerous occasions, by this local and by other locals. It came up officially before the Adjustment Board. It came up during negotiations. Mr. St. Sure had informed the unions at that time of the position of [138] the canners in regard to the effect of the preferential hiring clause in the agreement, and there have been cases before the Adjustment Board, and the Adjustment Board officially has ruled that it was not a closed shop contract, but rather a preferential hiring clause, and the covering is taken care of in the collective bargaining agreement.

Mr. St. Sure: May I interrupt before we get any further into the conclusions of Mr. Tomson? I submit that the answer is not responsive to the question. It goes far beyond the question.

Since Mr. Tomson has seen fit to refer to the official records of the Adjustment Board, I prefer that they be produced, because my recollection vastly differs from Mr. Tomson's. I prefer not to cross-examine on hearsay, and I ask that the answer be stricken.

Trial Examiner Myers: Strike out the answer and read the question to the witness, please.

(The question was read.)

Trial Examiner Myers: Yes or No?

A. Yes.

Q. On how many different occasions was the matter discussed?

(Testimony of R. M. Tomson.)

A. On numerous occasions. It was discussed not only there but during the contract negotiations every year, it was discussed.

Trial Examiner Myers: That is enough, now.

Q. (By Mr. Jennings): Did the C. P. & G. inform the Union of its position at the time of the discussions?

Mr. Tobriner: Objected to on the ground that any information would be in writing. I demand the written documents.

Trial Examiner Myers: Wait. Suppose he says, "No"? What is the use of asking?

Mr. Tobriner: I object, because this witness, when he starts in, he just turns it on.

Mr. Edises: I will ask the counsel be admonished not to speak in that manner of a witness who has a right to the protection of this body.

Mr. Tobriner: The witness can take care of himself, Mr. Edises.

Mr. Edises: Just keep these cracks out of it, then.

Trial Examiner Myers: Just answer Yes or No, Mr. Tomson.

A. Yes.

Mr. Tobriner: I object.

Q. (By Mr. Jennings): You heard Mr. St. Sure state his position this morning, did you, Mr. Tomson?

A. That has always been his position, if I am referring to what you say, and I think that you read

(Testimony of R. M. Tomson.)

a letter there, or something, where he explained about the preferential hiring. Isn't that what you are talking about?

Q. That is right.[140]

A. It has always been his position that they could not fire employees for not being paid up in the union.

Mr. St. Sure: I do not mind Mr. Tomson agreeing with me, if he wants to agree with what I said, period; that is all right. But, to characterize what I said and interpret it, I do not propose to permit.

Trial Examiner Myers: Strike out the answer and read the question to the witness. It calls for a Yes or No answer.

(The question was read.)

Trial Examiner Myers: Yes or No.

A. I cannot answer that Yes or No, because I don't know what position he is talking about. If he reads his position—I heard everything that took place here this morning. What he is referring to, I don't know.

Q. That is the question I asked you. You heard Mr. St. Sure state the position which he is now maintaining with regard to the contract?

A. I heard what Mr. St. Sure said this morning, yes.

Q. Was the position which the C. P. & G. took on these past occasions substantially the same as that taken by Mr. St. Sure this morning? Answer Yes or No.

Mr. Tobriner: If the answer is Yes or No, I will not object.

(Testimony of R. M. Tomson.)

Trial Examiner Myers: That is all it is going to be, Yes or No. [141]

Mr. Tobriner: But I want to make one objection. It calls for a conclusion of the witness when he say "substantially the same". After all, what one witness may think is substantially the same as the position of Mr. St. Sure, another witness may think is not substantially the same, so it seems to me the witness is being called upon to use discretion and opinion.

Trial Examiner Myers: What do you want to eliminate, the word "substantial"?

Mr. Tobriner: Yes.

Trial Examiner Myers: Strike out the word "substantial".

The Witness: I don't even know what the question is now.

Trial Examiner Myers: Reframe your question.

Q. (By Mr. Jennings): On the past occasions when this matter was discussed between the C. P. & G. and the Union, Mr. Tomson, did Mr. St. Sure take the same position as he stated this morning?

Mr. Tobriner: A further objection. I think that if we go over the whole history of some years of negotiations and ask a question like that, it is impossible to answer it. I think the only way to do so would be through the production of the records. All the Adjustment Committee material is in writing. I ask that the Board attorney produce what he is relying on.

Trial Examiner Myers: Overrule the objection.

(Testimony of R. M. Tomson.)

A. Yes, the position has been similar, except that I do not remember, unless he states it again.

Q. Would you state, to the best of your recollection, now, in substance, what Mr. St. Sure's position was on behalf of the C. P. & G. in the past with regard to whether or not the contract required the discharge of people who did not maintain their membership in good standing?

Mr. St. Sure: If the Trial Examiner please, largely in the interests of shortening the proceeding and avoiding taking the stand myself, it seems to me the witness has testified, in answer to direct examination, that the position is consistent with what I stated this morning. Why restate it and get into possible conflict?

Trial Examiner Myers: That is right. Was your statement ever reduced to writing?

Mr. St. Sure: There is a letter that the Board introduced. I do not recall any others. There may have been other documents.

Trial Examiner Myers: What written documents did you refer to, Mr. Tobriner?

Mr. Tobriner: The minutes of the Adjustment Board, which are all compiled.

Trial Examiner Myers: Have you got it?

Mr. Tobriner: I do not have it here.

Mr. St. Sure: I can produce them. I would say that if produced, to my memory, there is no reference to this subject. But, I merely ask, in the event Mr. Tomson is allowed to testify about the official records of the Adjustment Board, I would

(Testimony of R. M. Tomson.)

rather have the records produced, without his memory.

Mr. Jennings: I might say, Mr. Examiner, that I thought I had access to a complete copy of the Adjustment Board records. I went through them and could not find any discussion of this matter in them. I may not have had all of them, but I was not able to find them.

Trial Examiner Myers: All right. I will sustain the objection to the last question.

Q. (By Mr. Jennings): What was the union's understanding, Mr. Tomson, as to the nature of its contract? Did the contract require the employer to discharge employees who failed to maintain membership in good standing in the union?

Mr. Tobiner: Objected to on the ground that his understanding or somebody else's understanding would not vary the written document, in any event. That is, his understanding would not.

Mr. Jennings: Certainly it is relevant, Mr. Examiner.

Trial Examiner Myers: Sustain the objection.

Mr. Jennings: The parties to the contract are entitled to state what their understanding of their agreement was. [144]

Trial Examiner Myers: Reframe the question.

Q. (By Mr. Jennings): What was the union's interpretation of its contract, Mr. Tomson, insofar as the preferential hiring provision of the contract is concerned? What did the contract require the employer to do? A. It required—

(Testimony of R. M. Tomson.)

Mr. Tobriner: Just a second. Objected to on the ground the contract shows that itself.

Trial Examiner Myers: Overruled.

A. ———required new employees to obtain a hire card from the Local Union, in order to go to work. It required old employees to obtain a clearance card from the Union, and these two different kinds of cards were to be picked up by Management from those who had them. That is what it reads in the agreement.

Q. Did the union interpret the contract as requiring the employer to discharge employees who failed to maintain their membership in good standing after they were once cleared?

Mr. Tobriner: Objected to on the ground that this man cannot speak for the union, nor what the union's understanding of its position was.

Trial Examiner Myers: Overruled.

Mr. Tobriner: I also object on the ground it does not say when or where.

Trial Examiner Myers: He is talking about any time during the life of the contract.

The Witness: I was the Manager of the union at that time, and I should be able to speak for it at that time.

Trial Examiner Myers: Answer the question. Do you want the question read to you?

The Witness: No. I believe I remember it.

A. The position of the union varied. In some instances we interpreted—the union interpreted it to mean that it was a closed shop agreement. In

(Testimony of R. M. Tomson.)

some cases we did not. However, Management, through the California Processors & Growers, always took the position that it was not a closed shop, and they so advised their operators that they represented.

Mr. St. Sure: I would ask that that latter portion be stricken. Certainly Mr. Tomson, unless he has been reading our mail, is not qualified to pass upon matters of that kind.

Trial Examiner Myers: Strike out the whole answer. Read the question.

Mr. Jennings: Mr. Examiner, the entire answer should not be stricken.

Trial Examiner Myers: I cannot separate one part from another.

Mr. Jennings: Read the question, Miss Reporter.

(The question was read.)

Mr. Edises: I wonder if we could have his former answer read back? I think the Examiner was correct in part of his ruling. [146]

Trial Examiner Myers: Just tell us about this. Sometimes Yes and sometimes No does not tell us about what position the association took.

A. The union, if they thought they could get away with it, insisted that it was a closed shop provision. Naturally a union interprets the——

Trial Examiner Myers: Never mind any more now, please.

Q. Did any representative of the C. P. & G. ever agree with you that the contract was a closed shop contract?



(Testimony of R. M. Tomson.)

Mr. Tobriner: Objected to on the ground that any representative of the C. P. & G. over a period of years might include many persons who could be assumed to be representatives of the C. P. & G. That is a blanket, broad question. Let the attorney break it down if he wants to ask that question.

Trial Examiner Myers: Overruled.

A. No, they have not.

Q. I would like to ask you again, Mr. Tomson, what position the C. P. & G. consistently took with regard to this contract?

Mr. St. Sure: Mr. Trial Examiner——

Trial Examiner Myers: I will allow this one question. Let it go.

A. That it was a preferential hiring clause, and not a closed shop agreement.

#### Cross-Examination

By Mr. St. Sure:

Q. Mr. Tomson, despite the position of the C. P. & G. that you have outlined, you, as Manager of the Local Union 22382, took the position, did you not, that in your territory the contract was going to be a closed shop contract, regardless of the C. P. & G. position, didn't you?

A. Sometimes that position was taken.

Q. Did you ever take any other position in discussions with me in connection with the operation in your territory in connection with C. P. & G. plants?

A. Sometimes we just did not discuss it with

(Testimony of R. M. Tomson.)

you. We did not do anything about it at all, because we knew what your answer would be.

Q. But when you did discuss it, you took that position, that it was a closed shop agreement, so far as you were concerned.

A. We tried to get you to say it was.

Q. Will you answer my question, sir?

A. We tried to get you to say.

Q. In trying to get me to say that, you asserted, from your point of view, that that was the way the contract was administered in your territory, isn't that correct?

A. If we could get you to agree on it.

Q. Just answer my question, Mr. Tomson. Did you not assert in discussions with me that so far as your union was concerned, that you were going to administer the contract as a closed shop contract?      A. Not exactly, no. [148]

Q. Very well. Mr. Tomson, do you recall testifying before a Panel of the War Labor Board in a dispute case in 1944, at which time the Cannery Council was endeavoring to secure a check-off provision in the contract, and that was a matter of dispute before the War Labor Board?

A. Yes, I attended that.

Q. Do you recall at that time——

Mr. St. Sure: I do not have the transcript here, Mr. Trial Examiner, for the purpose of refreshing the witness' recollection, so I would like to ask these questions.

(Testimony of R. M. Tomson.)

Q. (By Mr. St. Sure): Do you recall testifying at that time, insofar as the Modesto Local was concerned, the one of which you were the Business Manager, that you operated on a closed shop basis with a check-off in all plants in this area?

A. No, I do not recall saying that.

Q. Was that the fact or was it not the fact, Mr. Tomson? A. No, it was not the fact.

Q. In how many plants did you have a check-off agreement of dues and compulsory membership?

A. At what time was that?

Q. In 1944, 1945, up to the time that you left the union. A. Practically all of them.

Q. Practically all of them, including the Hume plant? A. Yes. [149]

Q. You required that dues be collected from the members of your union in order for them to remain on the job in the Hume plant, did you not?

A. Dues were collected through a check-off at the Hume cannery.

Q. You required that by agreement with the management, is that correct?

A. It is stipulated the check-off agreement—

Trial Examiner Myers: Did you require it?

Q. (By Mr. St. Sure): Did you require that when you were the Business Manager of this union?

A. Well now, you are not going to make me say something that did not happen. There were times down there when they did not pay their dues.

Q. What did you do in those times?

(Testimony of R. M. Tomson.)

A. We could not do anything about it. We took the case up before the Adjustment Board, and you ruled against it.

Q. I will ask if you can name a single case when that occurred, Mr. Tomson, a single individual or single occasions?

A. There were two or three occasions. I do not remember the individuals' names, but it was before the Adjustment Board in the Hume Cannery.

Q. In the Hume cannery? A. Yes.

Q. When was that, according to your recollection? [150]

A. I think it was about 1944, I would say, some time in '44, during the canning season.

Q. It is your contention that there was an official complaint filed by you or by your local union in connection with the non-payment of dues of employees in the Hume Canning Company?

A. I don't know whether it was written or verbal, but there were two or three cases up there.

Q. Mr. Tomson, you remember the Adjustment Board. Don't you recall and don't you know that the Adjustment Board procedure required that any matter that came before the Board had to be filed in writing before the Board?

A. Yes, but there were matters before the Board that were not in writing, too.

Mr. St. Sure: I submit that the contract speaks for itself, Mr. Trial Examiner, as well as the Board procedures, if we want to go into it.

Q. (By Mr. St. Sure): Is it not a fact, Mr.

(Testimony of R. M. Tomson.)

Tomson, that you obtained from the Hume Canning Company a signed agreement whereby the company management agreed to check off the dues on a compulsory basis of all employees of the Hume plant?

A. Yes.

Q. When did you first secure that agreement?

A. I think it was 1944. I am not certain now.

Q. Did you continue to observe and enforce that agreement from the point of view of your union, up to the time that you left the union as an officer?

Mr. Edises: Mr. Examiner, I want to interpose an objection at this point. There has been reference to some agreement about dues collection and check-off, and that has been characterized in the course of this colloquy as requiring compulsory check-off by all employees. I submit that the agreement there is likewise the best evidence. I want to show on the record that it is not our contention or our position that it does require compulsory dues payments by all employees.

Trial Examiner Myers: Overruled.

Will the Reporter read the question?

(The question was read.)

A. Yes, we did that.

Q. And you obtained similar agreements from other canneries in the Modesto area, did you not, both members of the C. P. & G. and non-member plants of the C. P. & G.?

A. Yes.

Q. Going back to this matter of your testimony before the War Labor Board, do you not recall,

(Testimony of R. M. Tomson.)

Mr. Tomson, that you testified at that time, before the Panel, at least, the dispute Panel, that the practice of the Modesto area in connection with your Local union, the plants with which you had contracts, was to require good standing under a check-off of dues? [152]

A. I probably did. We had check-offs, I think, in most plants then.

Q. Then you would say, according to your recollection, that would be the testimony you would give or did give before the Board in 1944, is that correct?

A. We required the payment of dues to remain in good standing, is that your question?

Q. Yes. You required that employees remain in good standing, and that they pay their dues in order to remain on the job?

A. Well, the union required that, yes.

Q. Pardon me?

A. I say, the union required that.

Q. Is it not a fact, Mr. Tomson, that you used to make the statement that, regardless of how the contract was administered in other territories, that so far as the Modesto territory was concerned, it was a union shop or closed shop agreement?

A. No.

Q. You never made that statement?

A. I don't ever remember making it.

Q. Do you recall ever saying anything in substance of that kind?

(Testimony of R. M. Tomson.)

A. I don't recall making that statement. The check-offs and the agreement spoke for itself, and I don't know what you are leading up to in me making those statements.

Q. I am not leading up to anything. I just asked if you made such statements.

A. I do not recall such statements.

Trial Examiner Myers: What is the point? Who is saying that it is not a closed shop? Who is contending that it is not a closed shop contract, the union?

Mr. Jennings: Yes.

Trial Examiner Myers: And you, Mr. Tobriner?

Mr. Tobriner: We insist it is a closed shop.

Trial Examiner Myers: You, Mr. St. Sure, say it is not a closed shop, is that it?

Mr. St. Sure: As I have said, and I repeat it, so far as the literal contract itself in its written form is concerned, it is not quite expressly closed shop, but our position in the area, particularly in this area, both the practice and the additional agreements that were executed, may as well constitute a closed shop, and it has been so administered during the period that is in question. I assume it likewise would be considered by the National Labor Relations Board. We must not forget that, as we go along, in characterizing what kind of a contract we have.

Trial Examiner Myers: Go ahead.

Mr. St. Sure: I have no other questions.

(Testimony of R. M. Tomson.)

Trial Examiner Myers: Mr. Tobriner?

Q. (By Mr. Tobriner): Mr. Tomson, you were business Manager of this union and administered its contracts, and so forth, is that right? [154]

Q. Do you remember at one time Mr. Brown was suspended by the local?

A. That is right.

Q. Did you not take the position that upon that suspension he must be discharged from his job?

A. I think the union wrote the company a letter and advised them that he had been expelled from the union.

Q. Who wrote the letter? A. The union.

Q. Who signed it?

A. I think the President of the union.

Q. Who was the President?

A. Mr. Burroughs.

Q. You knew about the letter?

A. Yes. I probably signed it, too.

Q. You signed it, too, and sent it to a member of the C. P. & G.? A. Yes.

Q. You did not say at that time that there was not a closed shop contract, did you?

A. No. We advised the management that the man had been expelled from the union, and was no longer a member in good standing.

Q. You mentioned that you had a case with Hume where you went down there and asked for certain individuals to be separated from Hume. You mentioned that just a few minutes ago, didn't you?



(Testimony of R. M. Tomson.)

A. That they pay up and become in good standing with the union.

Q. You tell me that case went up to the Adjustment Board, is that right?

A. On two or three occasions. They were new employees, however.

Q. Did you argue that case before the Adjustment Board?

A. I don't know whether it came up officially before the Board, or whether it was just talked over with Mr. St. Sure. I am not sure now.

Q. In either event, did you tell Mr. St. Sure that you did not have a union shop contract or closed shop contract?

A. I know we did not.

Q. You bet you didn't.

A. I say, I know we did not have a closed shop contract.

Q. I am asking what you told Mr. St. Sure. Would you answer my question?

A. I told him that there were employees at the G. W. Hume Company that were working there who were not members of the Union, and that we wanted them to become members of the Union, and they were in there working, not members. [156]

Q. You told him that. Didn't you say that under the contract they were not supposed to work, they not being members of the union?

A. No.

Q. You did not say that?                      A. No.

(Testimony of R. M. Tomson.)

Q. Why did you take the case up to the Adjustment Board?

A. To see if Mr. St. Sure could do anything for us on it.

Q. So you took the position, as the Business Manager of the union, although you were required, under the constitution and by-laws of the union, to protect its rights, you went up there and did not say to Mr. St. Sure that you had a union shop contract?

Mr. Edises: Objected to as argumentative.

Trial Examiner Myers: I will sustain the objection.

Q. (By Mr. Tobriner): You contend that you never said to Mr. St. Sure that you had a union shop contract?

A. Why should I say that to Mr. St. Sure? We argued every year trying to get one on negotiations, and could not get it. So, why come back and tell him that we had one, when we knew we did not?

Q. But you tried to get people discharged, and did get people discharged under that contract, did you not? A. I tried to.

Q. And you did, didn't you?

A. No, I don't remember doing it.

Q. You just told me you got Mr. Brown discharged.

A. I said we wrote a letter to the company, notifying the company that he had been expelled from the union.

Q. And he was discharged?

(Testimony of R. M. Tomson.)

A. I don't know whether he was discharged or not.

Q. You don't know? A. No, I don't.

Q. In your work now as a labor relations advisor, is that for unions or for employers?

A. Employers.

Mr. Tobriner: Thank you. That is all.

Trial Examiner Myers: Any redirect examination?

Redirect Examination

By Mr. Jennings:

Q. Mr. Tomson, you said that you tried to negotiate a full closed shop contract, is that it?

A. Yes.

Q. You tried to secure by negotiations a full closed shop? A. Every year.

Q. Did you ever reach any agreement on a full closed shop?

A. The best we got is what we had there, a preferential hiring clause.

Q. What did you ask for in the way of a full closed shop? What did you want the contract to provide? [158]

A. We asked for a closed shop and hiring hall. We have asked for absolutely closed shop, and I think on two different occasions we have asked for a hiring hall.

Q. Did you ask that employees be required to maintain membership in good standing in the union?

A. Yes, and not be allowed to work there if they did not. That is a closed shop agreement.

(Testimony of R. M. Tomson.)

Q. There has been reference to the collection of dues under this dues check-off contract, Mr. Tomson. How was that handled?

A. The employers sent a list to the union office of the names of the employees working for them. That list came in about—it came in once a month to the union office. Then the union would check the list against their files and enter the amount that was due the union for dues and initiation fees for each of the employees appearing on that list, and send it back to the company, and the company made deductions from their payroll, and in turn sent a check to the union for the amount of deductions.

Q. I am not certain that the record is clear. You said that you had some discussion with regard to some employees at the Hume plant some time in 1944, I think you said, during the operating season?

A. Yes, in regards to new employees.

Q. As a result of those discussions or conferences with C. P. & G., were any employees fired?

A. No.

Mr. Jennings: That is all.

#### Recross-Examination

By Mr. Edises:

Q. Mr. Tomson, in the course of your testimony you referred to an agreement for the dues collection and check-off that was made with the Hume Company, I believe some time during the year 1944?

A. Yes.

(Testimony of R. M. Tomson.)

Q. I ask you if the document which is in existence as Board's Exhibit 7 is the agreement that you referred to?

A. It looks like it. However, I have not read it all. I don't know if it is the exact one or not, but it looks like the one that we signed.

Q. That has been identified in the hearing as the contract which was made in regard to dues collections?

A. Of course, now, I do not say that this is the exact one. I do not know. I have not read it.

Q. I would like to ask you whether there was any other agreement of any kind, any other written agreement in addition to or supplementary to this contract in regard to dues collections or check-off.

Trial Examiner Myers: With Hume?

Mr. Edises: With Hume, yes.

A. I am trying to think. I don't remember. There was something there that—I don't know whether it was an agreement [160] or just verbal, between Mr. Hume and myself. Something about the time of the month that the money was to be paid to the union, that was deducted. I do not recall whether it was written or verbal, or what it was.

Q. But, other than that, there was no agreement or understanding?

A. Not that I recall.

Mr. Edises: That is all.

Q. (By Mr. St. Sure): Mr. Tomson, as I understand your testimony now, you say that there were occasions when you discussed with me the fact that

(Testimony of R. M. Tomson.)

certain employees of the Hume Company were not members of the union, and those were new employees?

A. Yes.

Q. You say that there were none discharged as a result of those discussions. Was that because they joined the union?

A. No. It was because we did not do anything about it further, after we talked to you.

Q. Mr. Tomson, do you contend that the contract does not require that new employees join the union, by its express terms?

A. I thought at that time that they should join the union, yes.

Q. And the contract required that if the new employees did not join the union, you had a right to ask that those employees be discharged, under the express terms of the contract, did you [161] not?

A. I thought I had that right, yes.

Q. You did not assert it on that occasion? You were nice about it, and did nothing about it, is that correct?

A. I did something about it.

Q. What did you do about it?

A. I took it before the Adjustment Board, and I took it before you, and I took it before Mr. Hume, and I took it before the steward in the cannery down there. We did a lot of things about it.

Q. What happened?

A. Nothing happened.

(Testimony of R. M. Tomson.)

Q. The Adjustment Board had such a matter before it as interpreting the contract as to new employees, and nothing happened, is that your recollection?      A. Yes.

Mr. St. Sure: I have no other questions.

Q. (By Mr. Tobriner): Mr. Tomson, did you not tell me that you argued that you did not have that kind of a contract, to require discharge?

A. He is talking about new employees, and you are referring to employees. There are two different things. There is a new employee and an old employee.

Q. I am talking about the Hume case.

A. That is right. [162]

Trial Examiner Myers: He said "new employees".

Q. (By Mr. Tobriner): In the Hume case, do you want the record to show that you argued to Mr. St. Sure that the contract did not cover them and did not require them to be members of the union?

A. What I was after—we required, (which the contract requires) that they obtain a hire card for new employees, and a clearance slip for old employees.

Q. Did you argue that to Mr. St. Sure?

A. Yes. No, I argued that—the point I argued to Mr. St. Sure was that we got the hire slip from the new employees, but they did not join the union.

Q. And you did not require the employer to see that they joined the union? You did not take any action?

(Testimony of R. M. Tomson.)

Trial Examiner Myers: He said what action he took.

Q. The contract provides further action, does it not, than what you said?

A. Yes. The contract provides that the rest of the employees can refuse to work, and all that, and—I am not sure on this case. Probably they have the records. It may be that the union may have written a letter on it, saying that they would take action, in refusing to work with the new employees, if they did not. I do not recall. It may be in the letter in the records over there. I do not have access to the records.

Trial Examiner Myers: Do you want to answer that? [163]

Mr. Jennings: Could we take a 5-minute adjournment, Mr. Examiner?

Trial Examiner Myers: Very well.

(Whereupon a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Myers: Are you ready, gentlemen?

Mr. Jennings: Ready.

Trial Examiner Myers: All right. Mr. Tobriner?

Q. (By Mr. Tobriner): Mr. Tomson, at any time when you were present at the Adjustment Board, did anyone on behalf of the union ever contend that the contract was a union shop contract? Yes or no, please, and will you explain your answer?

A. Yes, and to explain——



(Testimony of R. M. Tomson.)

Mr. Tobriner: Mr. Trial Examiner, I am going to ask the witness to answer Yes or No and then explain it, if he wants to.

A. (continuing) I do not recall that as having been officially said before the Adjustment Board.

Q. I did not say "officially".

Trial Examiner Myers: What was the question, again? Will you read the question?

(The question was read.)

A. You mean a closed shop or a union shop?

Q. A closed shop. [164]

Trial Examiner Myers: Which do you mean?

Q. Union or closed shop?

A. No. Now I will explain my answer, which you said I could.

We all understood—the members of the Adjustment Board were also members of the Negotiating Committee, and everyone on the Adjustment Board representing the unions understood what the contract was, because we had participated in negotiation. We understood how the clearance cards and hire cards went. We understood about the notification of the Board before any trouble began, before the employees were pulled out from working with non-union employees, and we knew it was a preferential hiring clause. So therefore, I do not recall of anyone on that Adjustment Board ever saying it was a closed shop or a union shop agreement.

Q. Did anyone at any time at any meeting of the Adjustment Board on behalf of the union contend that the contract required the persons who

(Testimony of R. M. Tomson.)

were not members of the union and not paying union dues to be discharged?

A. I do not recall that.

Q. You do not recall? A. No.

Q. Did you or anyone on behalf of 22382 at any time ever contend with an employer that the contract required employees who were not members of the union to be discharged? [165]

A. We notified them as to the section in the agreement that says non-union employees could refuse to work—or, union employees could refuse to work with non-union employees, and threatened them in that way.

Q. You did do that?

A. Yes. We have written letters to that effect, but we did not say it was a closed shop agreement.

Q. But you did require them to discharge persons who were not members of the union?

A. We notified them that we might cause action to be taken in the plant for union members to refuse to work with the non-union members.

Q. And you did take such action?

A. That action has been taken, yes.

Mr. Tobriner: That is all.

Trial Examiner Myers: Any other questions?

Mr. St. Sure: I have one or two I would like to ask.

Q. (By Mr. St. Sure): Mr. Tomson, in connection with this matter of new employees, you recall, do you not, the provisions of the contract which requires that if non-union employees were

(Testimony of R. M. Tomson.)

hired, that such a person would be required to file an application for membership in the local union before being put to work?           A. Yes.

Q. Do you recall likewise that the contract [166] required that upon filing of such application, such person would receive from the union a written statement that he had made such application?

A. Yes.

Q. That statement would be taken up by the employer and returned to the union when the applicant was put to work, do you recall that?

A. Yes.

Q. Do you recall that the contract likewise required that such person must become a member of the local union within ten days after his employment, is that correct?

A. Well, yes, but then there was another section in there that said they did not have to. They could pay 50c a week.

Q. What was that?

A. They could pay 50c a week, and did not have to become members.

Q. You are talking about so-called "emergency employees" under temporary agreement during the war period, are you not?           A. Yes.

Q. As to those employees, a specific contract was signed to the effect that the employer would require those people to pay 50c a week as the condition of employment?           A. That is right.

Q. That is correct, is it not? [167]

A. It is.

(Testimony of R. M. Tomson.)

Q. In connection with employees newly hired, is it not a fact, Mr. Tomson, that you on occasions visited the plants of members of the C. P. & G. and told the employers to discharge workers who had failed to complete their affiliation with the union?

A. Well, we might have asked them to. We might have even threatened them with causing a work stoppage if they did not.

Q. And you felt that was a matter of your right under the union contract, did you not?

A. It was a matter of right under the contract for the union members to refuse to work with non-union members.

Q. I am talking about new employees for the moment, Mr. Tomson. Did you not consider it your right under this contract that I have just referred to, to require the employer to discharge any new employee who failed to complete his affiliation with your union?

A. The contract does not say that. The contract says they will make application for membership in the union, and the contract says they will obtain hire cards, but it does not say that they must become members of the union.

Trial Examiner Myers: Did you ever tell the employer that he had to fire a new employee because he did not join the union within the 10-day period? Did you ever say that to any employer or to anybody representing the association? [168]

The Witness: Yes, we probably may have. I do not recall a specific case.

(Testimony of R. M. Tomson.)

Mr. St. Sure: Would you read back the last answer before the Trial Examiner asked his question, please?

Trial Examiner Myers: You mean the answer or the question?

Mr. St. Sure: Did you answer this last question?

The Witness: I did answer.

Trial Examiner Myers: Go ahead and read it, please.

(The answer referred to was read.)

Q. (By Mr. St. Sure): I will now ask you to read, Mr. Tomson, the sentence that I am making on the margin of page 3 of the contract, Section 3 (a) of the contract. Just the last sentence. Read it aloud, please.

A. "It is further understood that such person must become a member of the local union within ten (10) days after his employment, and that the local union will not unreasonably refuse to accept such person as a member."

Q. Thank you. Does that refresh your recollection, Mr. Tomson, as to whether or not the contract did require that they must become members of the union within ten days?

A. Well, I remember that section.

Q. You do. Then what did you mean a moment ago when you said the contract did not say that?

A. I did not say the contract did not say [169] that.

Q. Very well. We will let the record stand.

(Testimony of R. M. Tomson.)

Another question, Mr. Tomson, if you please.

Do you not recall, in connection with Mr. Brown, who was an employee of the Turlock Cooperative Cannery, that not only did you send a letter to the management, or your union sent a letter, with your approval, demanding that Mr. Brown be discharged, but that you personally went to the plant and demanded that he be discharged or you would pull all the workers out of the plant? A. Yes.

Q. You did do that? A. Yes.

Q. Do you recall an employee of the Hume Canning Company named Perez, whom you required to be discharged about the 15th of July of 1944 for failure to join the union? A. No.

Q. You do not recall that? A. No.

Mr. St. Sure: I have no other questions.

Q. (By Mr. Tobriner): Mr. Tomson, in your capacity——

Mr. Edises: Mr. Examiner, I wonder if I might have an opportunity occasionally to ask a question?

Trial Examiner Myers: Go ahead.

Q. (By Mr. Edises): Mr. Tomson, Section 3(a) of the contract provides: [170]

“It is recognized that the refusal of the Union members to work with non-union employees who are within the jurisdiction of the local Union shall not constitute a violation of this agreement, provided, however, that before any strike action, job action or other action is taken on this account, the local Union will submit the matter for adjustment as provided in Section 8 hereof.”

(Testimony of R. M. Tomson.)

Was it your understanding and the understanding of your union that that was the only instrument provided in the contract for enforcing a requirement of membership in your union?

Mr. Tobriner: Objected to on the ground that we are not interested in his understanding.

Trial Examiner Myers: Let us not go into that. I will sustain the objection. Reframe the question.

Mr. Edises: I think my purpose will be sufficiently established, Mr. Examiner, if I merely call the attention of the Trial Examiner to that section of the contract.

Trial Examiner Myers: Very well.

Mr. Edises: And also to the section——

Trial Examiner Myers: What section is it?

Mr. Edises: That is Section 3 (a) on page 2 of the contract.

Mr. Jennings: May we take a short recess now? It is connected with this same matter.

Trial Examiner Myers: Very well. We will take a short [171] recess.

(Whereupon a short recess was taken, after which proceedings were resumed as follows.)

Trial Examiner Myers: Are you ready, gentlemen?

Mr. Jennings: Ready.

Trial Examiner Myers: Mr. Tomson, will you resume the stand, please?

(Testimony of R. M. Tomson.)

Has anyone any further questions to ask Mr. Tomson?

Mr. Agee: No questions.

Mr. Edises: No questions.

Mr. Tobriner: No questions.

Trial Examiner Myers: You are excused, Mr. Tomson. Thank you very much.

(Witness excused.)

Trial Examiner Myers: Will you call your next witness, please, Mr. Jennings?

Mr. Jennings: Mrs. Waite.

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### RUTH WAITE

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

#### Direct Examination

Trial Examiner Myers: What is your name, please?

The Witness: Ruth Waite.

Trial Examiner Myers: Will you please spell your last name [172] for the record?

The Witness: W-a-i-t-e.

Trial Examiner Myers: Is it Mrs. or Miss?

The Witness: Mrs.

Trial Examiner Myers: Where do you live?

The Witness: 575 Mitchell, Turlock.



(Testimony of Ruth Waite.)

Trial Examiner Myers: You may be seated, Mrs. Waite. You may proceed, Mr. Jennings.

Q. (By Mr. Jennings): Did you state your name, Mrs. Waite?

Trial Examiner Myers: We have the name.

Q. Where are you employed?

A. Hume Cannery, Turlock.

Q. How long have you been employed there?

A. Starting my 11th year.

Q. Are you a regular worker or a seasonal worker?

A. Seasonal.

Q. When did you come to work in 1945?

A. In 1945?

Trial Examiner Myers: Last year.

Q. Last year.

A. Well, we worked in spinach. I don't just recall when we started.

Q. That was in the spring of 1945?

A. Yes.

Q. Did you secure a clearance when you went to work in [173] spinach?

A. No, I don't think I did in spinach.

Q. How long did spinach last? About a month or so?

A. I think so.

Q. What was the next crop you worked in?

A. Well, we worked in apricots; then we worked in peaches. We did not work in apricots.

Q. Before you went to work in apricots—

A. We did not.

Q. Not in 1945?

A. That is right.

(Testimony of Ruth Waite.)

Q. And you went to work in peaches in 1945?

A. Yes.

Q. Before you went to work in peaches, you had to sign a clearance before you went to work?

A. Yes.

Q. Did you sign a clearance?

A. Yes, I signed a clearance.

Q. When you came to the plant to work, did you try to walk right in without a clearance?

A. Yes.

Q. What happened?

A. We were told we had to obtain a clearance before we could work, in the cabin over across the street.

Q. Who told you that? [174]

A. Mr. Fordham.

Trial Examiner Myers: Mr. Who?

The Witness: Fordham.

Q. (By Mr. Jennings): Was this cabin across the street you refer to on company property?

A. Yes. It is right by the payroll office, across the street.

Q. What did you do then? Did you go across the street?

A. Yes. We all lined up, and went in line, about two abreast, I think it was.

Q. What did you do?

A. We went in, and each one had to sign a clearance. We didn't any of us want to, but they said we had to before we could work.

(Testimony of Ruth Waite.)

Q. Did you have to sign anything else besides a clearance?

A. Yes; a dues deduction slip.

Trial Examiner Myers: About how many people went with you?

The Witness: Well, I was—there was a lot of them behind me. I don't know how many. You know, we were all in line.

Trial Examiner Myers: About how many?

The Witness: I imagine 200.

Trial Examiner: All employees of Hume?

The Witness: Yes.

Q. (By Mr. Jennings): Was there any representative of the company there while you were signing? A. I don't recall.

Q. Did you sign the clearance and the dues check-off? A. Yes.

Q. Did you have any discussion with the man who had you sign it, about whether or not you had to?

A. Yes. I said, "Do I have to sign?" and he said, "Yes, you do, before you can work."

Q. Then you signed it? A. I signed it.

Q. After you had signed the dues check-off, did it continue in effect, or did you cancel it?

A. No. I signed the revocation slip.

Q. How long after?

A. I think the next day. I am not sure. But, it was right away.

Q. At or about that time did you sign a pledge card for FTA-CIO?

(Testimony of Ruth Waite.)

A. Well, it was later than that, I think around the latter part of August I signed that.

Q. Did you continue to work during the balance of the peach season?      A. Yes.

Trial Examiner Myers: How long did the season last?

The Witness: Well, we worked all of August, and I think until about the 16th or 17th of September. [176]

Q. (By Mr. Jennings): Did you come to work then in the fall spinach?      A. Yes.

Q. About when was that?

A. We started—I think it was around the 7th or 8th of November and we only worked that one day, and then we missed a few days. Then we went back later. I forget. It was about—the 14th, I believe.

Q. When you came to work in the fall spinach, were you required to sign a clearance again?

A. Yes.

Q. Before you came to work or after you had come to work?

A. I think we signed it when we first went to work.

Q. Did you sign another dues slip, does check-off?

A. No; I did not sign one when I first went to work, either.

Trial Examiner Myers: You did not sign what?

(Testimony of Ruth Waite.)

The Witness: No, I did not sign when I first went to work.

Trial Examiner Myers: What?

The Witness: A clearance slip.

Trial Examiner Myers: You did not?

The Witness: No.

Q. (By Mr. Jennings): Did you sign a dues check-off slip when you first went to work in fall spinach?

[Answer not shown.]

Q. After you started to work in fall spinach did anyone tell you that you must?

A. Yes. We were told we must sign with them or we would lose our job and could not work.

Q. About when was that statement made to you?

A. Within a day or two. I think.

Trial Examiner Myers: Was it after you went back on the 14th of November?

The Witness: Yes, I think it was.

Trial Examiner Myers: What did they say, whoever said it?

The Witness: Mr. Fordham come to us and told us we had to go out and clear with the union, and if we did not, we would lose our job.

Trial Examiner Myers: Did he say what union?

The Witness: No, he did not call it by any name. He just said the "union."

Q. (By Mr. Jennings): Did he say anything other than that you had to clear with the union?

A. He said if I did not clear I could not work there any more.

(Testimony of Ruth Waite.)

Q. Did he say what he meant by "clearing with the union?"

A. Well, he just said that if I did not clear with the union it would mean my job. I would be fired. I could not work any more.

Q. But he did not tell you what he meant by clearing with the union? [178]

A. Well, he meant I had to pay my back dues.

Mr. St. Sure: I will ask that that be stricken, as to what he meant. The witness is not a mind-reader.

Trial Examiner Myers: Strike that.

Did he tell you what he meant by "clearing with the union?" Did anybody ask him what he meant by "clearing with the union?"

The Witness: I did not ask him what he meant by it, but I knew what he meant.

Trial Examiner Myers: All right. We just asked you what Mr. Fordham said.

Q. (By Mr. Jennings): What did you understand him to mean?

Mr. St. Sure: Object to that as calling for the conclusion and opinion of the witness.

Trial Examiner Myers: Sustain the objection.

Q. (By Mr. Jennings): What did you do as a result of Mr. Fordham's statement?

A. Well, I went out and argued with the union men a while.

Q. Where were the union men?

A. They were out on the porch, in that little booth they have there.

(Testimony of Ruth Waite.)

Q. That was inside the plant gates?

A. Yes, it was inside the gates, on the porch. And, I told them I did not want to sign it and, well, he said I had to sign or else get out, and Mr. Fordham was there, and he says, "This is it. Either sign or you are fired. You can't work here any more if you don't sign."

Well, finally I said I would like to think it over. I did not want to sign then. And so, he said, "Well, you can think it over a while. You go home and sleep over it, and think it over a while." So, I did that. I did not sign that day.

Q. Did you sign later?

A. No, I never did sign.

Trial Examiner Myers: You spoke to some union man, you say?

The Witness: Yes. I talked to Brown and Evans, I believe it was.

Trial Examiner Myers: Brown and whom?

The Witness: Mr. Evans.

Trial Examiner Myers: Do you know what union they represented?

The Witness: They said they represented Local 22382, but I did not think—I thought it was the Teamsters, and I did not want to join the Teamsters, so, because I knew they were affiliated with the Teamsters, I did not sign.

Q. (By Mr. Jennings): As I understood your statement, Mrs. Waite, you did not then sign a new clearance?

A. No.

(Testimony of Ruth Waite.)

Q. And you did not sign any new authorizations?

A. Not that day.

Q. Did you the following day or the day after that?

A. Well, I think it was a day or two after that—it wasn't more than one or two days after that, we were working, when Mr. Fordham come to us again and said we was to go out and sign, so I went out and signed that day, but the next day I signed a revocation slip.

Q. But you did secure a new clearance?

A. Yes.

Q. And you signed a new clearance?

A. Yes.

Q. And you signed a new dues deductions?

A. Yes.

Q. Then you revoked it the following day?

A. Yes.

Q. How many of you were in the group that Mr. Fordham spoke to when you said that you would?

A. Oh, there was three or four or five of us around there, I know, three or four girls I knew, but I don't remember any of the others.

Trial Examiner Myers: On each of the three occasions?

The Witness: No, just the first time.

Trial Examiner Myers: How many were there when he spoke to you when you were speaking to Brown?

The Witness: You mean, the first time when we



(Testimony of Ruth Waite.)

went out? Oh, there was three or four of us girls that I knew there. [181]

Trial Examiner Myers: Were there any other employees present when Mr. Fordham spoke to you the second time after you came back after thinking it over?

The Witness: Well, I was working with the other girls there, where I was working. They heard him come and tell me, I think. That was just one or two of us that was paddling spinach.

Q. (By Mr. Jennings): On the 20th of November, which was a Tuesday, did you come to work?

A. Yes, I did.

Q. Did you go in to work?

A. No, I did not.

Q. What happened?

A. There was a picket line, and nobody went in. They wouldn't let nobody in on the 20th?

Q. On the 21st of November, did you go in?

A. Yes. I reported for work, and we went in on the 21st.

Q. Did you go through the picket line?

A. I did.

Q. Did you get inside the plant? A. Yes.

Q. Did you see any company official inside the plant?

A. Yes. I went in and saw my boss, and he said——

Q. Who was he? A. Mr. Gallardo.

Q. The Assistant Superintendent?

A. Yes. And he said he did not think I could

(Testimony of Ruth Waite.)

work until I cleared with the union, and I had better see the higher up. I guess he meant Mr. Fordham. So, when I went back out, there was a group of them around there, and Mr. Fordham was talking to all of them. He says, "This means all of you get out. You are fired." So, I suppose that meant me, too, and we all had to go out.

Q. What was Mr. Fordham talking about when you came there? Did you hear his statement?

A. I just heard him say that we were fired, and of course, I knew what it was for; we would not pay dues to the union.

Q. Did you leave then? A. Yes, we did.

Q. Did you work the balance of that spinach season? A. No, I did not.

Q. Were you called to work when spinach started this year?

A. I wasn't what you would say "called," but I went down and I was put on, put on work. I was there.

Q. You are working now? A. Yes.

Q. Did you sign a clearance this year?

A. You mean, since I started? [183]

Q. Before you went to work? A. No.

Trial Examiner Myers: When did you go back to work this year?

The Witness: 25th of March.

Q. (By Mr. Jennings): Have you been approached since you have come back this year, Mrs. Waite? A. Yes, I was at one time.

Q. By whom?

(Testimony of Ruth Waite.)

A. Well, Mr. King was one, and then another fellow I didn't know.

Q. Mr. King, an official of the Teamsters Union?

A. Yes. And I refused to sign.

Q. Was that while you were working?

A. That is while I was working down there.

Mr. Jennings: That is all.

Trial Examiner Myers: Mr. St. Sure, any cross-examination?

Mr. St. Sure: Yes.

#### Cross-Examination

By Mr. St. Sure:

Q. Did you have any other employment during the period from the 21st of November until your return to the Hume Company in March of this year?

A. No.

Q. Ordinarily do you work just during the canning operation? You are not employed other times?

A. No.

Mr. St. Sure: I have no other questions.

Q. (By Mr. Tobriner): Mrs. Wait, Mr. King, when he talked to you, did not say that he was a Teamster official, did he?

A. Well, no, I don't believe he did.

Q. You know that he is an official of 22382?

A. Yes, I know that. I knew that was affiliated with the Teamsters, too.

Q. You did not know that 22382 was affiliated with the Teamsters?

A. Yes, because there is a big sheet down there

(Testimony of Ruth Waite.)

nailed up in the cannery, for everybody to read, that Mr. Flanigan sent, for our union to affiliate with the Teamsters immediately.

Q. But 22382 never did affiliate with the Teamsters, did it?

A. Well, I thought it did, because that sheet said for them to do so.

Q. You did not go to the meetings of 22382 all the time, did you?      A. No.

Q. You never were at a meeting of 22382 when they did affiliate with the Teamsters, were you?

A. I have not been to any lately.

Mr. Tobriner: So you don't know. That is all.

Trial Examiner Myers: Any redirect examination? [185]

### Redirect Examination

By Mr. Jennings:

Q. When did you see this letter from Mr. Flanigan, Mrs. Waite?

A. It was tacked up on the wall down there at the cannery. I don't know if it is down there now or not.

Q. When did you first see it?

A. I remember seeing it last summer when we were working, some time. I don't know just the day, or when. I saw it, but I don't just remember when it was. It must have been around the peaches time; I don't know.

Q. Do you remember approximately what the letter said?

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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NATIONAL LABOR RELATIONS BOARD,  
Petitioner,  
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C. W. HUME COMPANY and CALIFORNIA  
PROCESSORS & GROWERS, INC.  
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INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMER-  
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COUNCIL OF CANNERY UNIONS, A.F.L.,  
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Transcript of Record

In Two Volumes

VOLUME II

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Upon Petition for Enforcement of an Order of the  
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No. 11693

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(Testimony of Ruth Waite.)

Mr. Tobriner: Objected to.

A. No, I don't just remember.

Mr. Tobriner: Just a second.

Let it stand.

Trial Examiner Myers: You mean you withdraw your objection?

Mr. Tobriner: Withdraw the objection. She does not remember, anyway.

The Witness: Well, it said to affiliate with the Teamsters. I do remember that much.

Q. (By Mr. Jennings): Where was this letter?

A. It was out on the board on the side of the building.

Q. Bulletin board? A. Yes.

Trial Examiner Myers: Inside the plant?

The Witness: Outside the plant.

Trial Examiner Myers: What do you mean, "outside?"

The Witness: Well, there is a sort of a porch, and it was, you know, between the doors where you go in.

Trial Examiner Myers: What is it, a bulletin board?

The Witness: Yes.

Trial Examiner Myers: Where notices are posted?

The Witness: Yes.

Trial Examiner Myers: Are there any other questions?

Mr. Jennings: Nothing further.

(Testimony of Ruth Waite.)

Recross-Examination

By Mr. Tobriner:

Q. You saw that bulletin posted there which recommended that the union go into the Teamsters? You did not see anything that ordered you to go into the Teamsters, did you?

A. I don't remember how it stated, now.

Mr. Tobriner: That is all, thank you.

Mr. Edises: Mr. Examiner, for the sake of the clarity of the record, I wonder if we could have a statement from counsel on that question? I notice that the Memorandum of Agreement which is in evidence here, and the authenticity of which has not been disputed, refers to Local 22382, International Brotherhood of Teamsters, AFL.

Trial Examiner Myers: Which memorandum?

Mr. Jennings: Board's Exhibit 8. [187]

Mr. Tobriner: I must state for the record that Board's Exhibit 8, for which I am responsible in part, because I read to you over the telephone some of that, is not entirely correct. I will have to get the original document, and we will have to take it up through our witnesses tomorrow, or whenever we convene again, when I go back to the office of the union.

Trial Examiner Myers: What is the point?

Mr. Tobriner: To clarify our position.

Trial Examiner Myers: All I want to know is: Does anybody want to ask this witness any further questions?

(Testimony of Ruth Waite.)

Mr. Tobriner: No.

Mr. St. Sure: I do not.

Trial Examiner Myers: All right.

You are excused. Thank you.

(Witness excused.)

Trial Examiner Myers: Will you call your next witness, please?

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### MARGUERITE WATTS

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

#### Direct Examination

Trial Examiner Myers: What is your name, please?

The Witness: Marguerite Watts; Mrs. Marguerite Watts.

Trial Examiner Myers: Will you please spell your last name?

The Witness: W-a-t-t-s.

Trial Examiner Myers: Where do you live, Mrs. Watts?

The Witness: 644 East Olive, Turlock.

Trial Examiner Myers: You may proceed, Mr. Jennings.

Q. (By Mr. Jennings): Where are you employed, Mrs. Watts?

A. At the G. W. Hume Company.

(Testimony of Marguerite Watts.)

Q. How long have you been employed there?

A. I am going on my 22nd year.

Mr. St. Sure: If I might interrupt, Mr. Trial Examiner, to suggest to counsel for the Board that if the testimony he proposes to offer now is cumulative in effect, I am perfectly willing to stipulate, if he will name the witnesses he proposes to call and indicate that their testimony will be similar in character to that previously given, that it would be so considered, and it would be so testified to.

Trial Examiner Myers: Is this testimony going to be denied or rebutted by any other party?

Mr. St. Sure: I think in the main—and I will say, so far as the witness this morning that was called, Mr. Heagle, I think there will be no substantial difference in the position of the company with regard to the incidents that he related. So far as I know, while there may be some slight deviation in the testimony as to quotations of persons referred to by the last witness, I do not believe there will be any substantial difference or conflict in the story that the management will present in regard to the happenings during the period that has been testified about. That is, with regard to management participation.

With regard to the union's actions, and so forth, we are not bound, we feel, by those.

Mr. Tobriner: We are willing, if this is another witness who will testify to the same substance and events, to stipulate that her testimony would be the same in effect.

(Testimony of Marguerite Watts.)

Trial Examiner Myers: Is that going to deny any of the testimony of the former witness?

Mr. Tobriner: Not with respect to what occurred at the Hume plant. The only part of the testimony which we may want to clear up is with respect to the continuity of the existence of 22382 and the status of the union.

Trial Examiner Myers: What about that, Mr. Jennings? Do you want still to ask this witness some questions? I am assuming that this witness is going to testify to the same or similar facts.

Mr. Jennings: Yes, her testimony, Mr. Examiner, will be substantially the same as Mrs. Waite's. There would be some slight variations with respect to her particular experience, but her experience was substantially the same.

Trial Examiner Myers: What do you want to do?

Mr. Jennings: I am wondering if counsel would stipulate with me that if Mrs. Watts were to testify, her testimony would be substantially the same as that of Mrs. Ruth Waite, who has just left the witness stand?

Mr. St. Sure: Of course, if counsel will indicate that his interview with the witness would indicate that her testimony would be such, I am prepared to stipulate that it would be substantially the same.

Mr. Tobriner: It is so stipulated.

Mr. Edises: I will agree with the stipulation.

(Testimony of Marguerite Watts.)

Trial Examiner Myers: Will you make that statement, Mr. Jennings, that Mr. St. Sure wants?

Mr. Jennings: Yes.

Her statement is substantially the same as that of Mrs. Waite.

Trial Examiner Myers: Then, as I understand it, you, Mr. St. Sure, and you, Mr. Edises, and you, Mr. Tobriner, and you, Mr. Jennings, are going to stipulate that this witness would testify to substantially similar facts as were testified to by the former witness, is that correct?

Mr. St. Sure: That is correct.

Mr. Edises: That is correct.

Trial Examiner Myers: Mr. Jennings?

Mr. Jennings: So stipulated, Mr. Examiner.

Mr. Tobriner: So stipulated. [191]

Trial Examiner Myers: Very well. Then I will excuse the witness.

(Witness excused.)

Mr. Jennings: If I might, I would like to indicate the other individuals with whom I have personally talked and whose testimony would be in substance the same.

Mr. Agee: They are available here?

Mr. Jennings: There are two of them here now. I think the others are working; I am not sure.

Mr. Edises: They are on call.

Mr. Agee: Just mention those that are available.

Mr. Jennings: I have seen them in the last few days, I believe.

I am reading now from Appendix A, attached to the Complaint.

Agnes Hopkins.

Myrtle Brown, who is here. I have one question in addition to ask. We might have to put her on.

Genevieve Alsup, who is here.

Mr. Agee: How do you spell that?

Mr. Jennings: A-l-s-u-p.

I might state for the convenience of counsel that to the best of my ability, on Appendix A, I put seasonal workers over on the right and regular workers over on the left.

Mr. St. Sure: I was going to ask that question. Thank you.

Trial Examiner Myers: We will take a short recess while you are preparing the full stipulation.

(Whereupon a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Myers: Are you ready?

Mr. Jennings: Yes, I am ready.

Trial Examiner Myers: Are you ready, gentlemen?

Mr. St. Sure: Yes, sir.

Mr. Agee: Ready.

Mr. Tobriner: Ready.

Mr. Jennings: I offer a stipulation first, Mr. Examiner, as to those employees whom I have named, and ask the agreement of counsel that their testimony would be substantially the same as that of Mrs. Waite.

Mr. Agee: So stipulated.

Trial Examiner Myers: Do you so stipulate?

Mr. Edises: So stipulate.

Mr. Tobriner: I will stipulate.

Trial Examiner Myers: Do you, Mr. Jennings?

Mr. Jennings: So stipulated.

I should like to put Mrs. Brown on for just one question, if I may.

Trial Examiner Myers: Certainly.

Mr. Jennings: Myrtle Brown. [193]

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### MYRTLE BROWN

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

#### Direct Examination

Trial Examiner Myers: What is your name, please?

The Witness: Myrtle Brown.

Trial Examiner Myers: How do you spell your last name, please?

The Witness: B-r-o-w-n.

Trial Examiner Myers: Where do you live, Mrs. Brown?

The Witness: I live in Turlock.

Trial Examiner Myers: You may be seated, Mrs. Brown. You may proceed, Mr. Jennings.

Q. (By Mr. Jennings): Mrs. Brown, it has been stipulated here that if you were called to testify, your testimony would be substantially the same



(Testimony of Myrtle Brown.)

as that of Mrs. Waite. I just wanted to ask you one question in addition to that.

Shortly before the 20th of November, 1945, when you were told that you must clear through the A.F.L., which company official was it that spoke to you?      A. Mr. Hume.

Q. Mr. R. G. Hume?      A. Yes.

Q. Will you tell me what it was that Mr. Hume told you?

A. Well, when I was arguing about joining up, I didn't want to join, so I asked Mr. Hume, I said, "If I sign up now and work in the spring, can we, the people, have a choice to vote for which union we want here in the plant?" And he said, "Yes," he said, "If you will just string along with me until March 1st," he said, "This contract is up," and he said, "You will have a chance to vote for either union or no union at all, if you want, because," he says, "I did not want the union here in the first place, but," he said, "You people wanted a union."

Q. Thereafter you did sign a clearance?

A. I went and signed, and went back to work that very day.

Mr. Jennings: That is all.

Trial Examiner Myers: Any questions, Mr. St. Sure?

Mr. St. Sure: No questions.

Mr. Tobriner: No questions.

Trial Examiner Myers: You are excused, Mrs. Brown. Thank you.

(Witness excused.)

Trial Examiner Myers: Off the record.

(Discussion off the record.)

Trial Examiner Myers: On the record.

Mr. Jennings: I should like to ask the stipulation of counsel that the following witness would give substantially the following testimony:

That Clifford C. Luther would testify that he has been employed as a seasonal worker since 1943, that he was required to sign a clearance and a dues check-off before going to work on or about the 8th of August, 1945; that he signed a revocation almost immediately thereafter; that he signed a designation for F.T.A.-C.I.O. in August of 1945; that he was told by Mr. Birchall on or about November 16th of 1945 that he had to sign a clearance and pay dues or he could not work; that on November 20th he was stopped by the picket line and did not go in to work; that on November 21st he was in front of the plant and heard Mr. Fordham state to the employees that unless they would pay dues and back dues to the A.F.L., they could not work, and that, "All of you are fired"; that when he came to work in August of 1945 he was told that he could not work until he signed a clearance and a dues check-off, by Mr. Fordham, and that when he protested he was told, "We are changing it a little"; that he thereupon went over and signed up; that he was called to work on February 7, 1946, worked 2 hours, but as he is a seasonal worker, not a regular worker, he did not work thereafter until the beginning of the spinach season, and

that the spinch season started about the 25th of March, 1946.

Mr. St. Sure: We are willing to stipulate that if the witness were called and sworn he would so testify, on the basis of Mr. Jennings' narration of his interview. [196]

The stipulations as to all of this, as I understand it, are not admissions as to the complete detail or the facts as recounted, but merely that the witness would so testify, if called.

Trial Examiner Myers: Are you going to rebut any of that testimony?

Mr. St. Sure: As I stated, Mr. Trial Examiner, there may be minor variations as to the words used and the persons quoted, but as to basic conflict, I expect that there is no basic conflict, and I believe there is none in the facts as they have been narrated. There may have been some minor variations of memory, of recollections of words used and persons talked with, but as to the events themselves, there is no basic conflict.

Mr. Tobriner: With the statement regarding the stipulation made by Mr. St. Sure, we would accept the stipulation.

Trial Examiner Myers: You, Mr. Jennings?

Mr. Jennings: So stipulated.

Trial Examiner Myers: And you, Mr. Edises?

Mr. Edises: We accept the stipulation without qualification.

Mr. St. Sure: That does not embarrass me. I will want the qualification.

Trial Examiner Myers: He accepts the whole stipulation.

If there is going to be any dispute about what this witness is going to testify, I would like to see the witness on the witness stand. It may resolve a conflict in the testimony.

Mr. Jennings: He is working.

Trial Examiner Myers: Go ahead with the next witness.

Mr. Jennings: R. E. Rearick. I offer the stipulation that if Mr. Rearick were called as a witness, he would testify that he has been employed as a seasonal worker since approximately September of 1942; that he signed a clearance and a dues check-off when he was employed on or about the 8th of August, 1945, and his clearance is in the record as A.F.L. Exhibit 1; that he was told at the plant that he had to clear with the A.F.L. before he could go to work. In that respect his testimony would be substantially the same as that of Mrs. Waite. That he was working on the 20th of November of 1945; that he attended the meeting or gathering in front of the boilerroom concerning which Mr. Heagle has testified, and of course heard the statements that were there made. An examination of the list will indicate that his name was not on the list, and he would testify, if he were asked on cross-examination, that his name was not read off by Mr. Heagle. That he came back on the 21st of November, 1945, to go to work; that he came into the yard, and he there heard Mr. Fordham tell the group who were there, including himself, "Get out of here, all of

you. You are fired;" that he thereupon left. In addition, he would testify that he signed a pledge card for F.T.A.-C.I.O. about August of 1945.

Mr. Tobriner: Mr. Jennings, when he allegedly heard the statement when he came to work on November 21st, that he would be fired or was fired, what time of the day was that, do you know? [198]

Mr. Jennings: That was in the morning, Mr. Tobriner, at the time Mr. Heagle has testified.

Mr. Tobriner: Approximately when?

Mr. Jennings: I did not ask him.

Trial Examiner Myers: He said he could not fix the time. He said it was some time during working hours.

Mr. Jennings: I can only say this: Mr. Rearick said that they came to work at 8:00 in the morning, and that this transpired, the events that Mr. Heagle testified to transpired from 8:00 o'clock on, and when Mr. Fordham made the statement they don't know.

Trial Examiner Myers: Will the parties so stipulate?

Mr. St. Sure: What is his status now, do you know? Has he returned to work? Is he a seasonal worker, or what is he? Did he work in the meantime?

Mr. Jennings: He is a seasonal worker, and as of the last time I saw him, which was yesterday morning, he was working. In other words, he has worked in spring spinach this year.

Trial Examiner Myers: Do the parties so stipulate?

Mr. St. Sure: So stipulate.

Mr. Edises: So stipulate.

Trial Examiner Myers: Mr. Tobriner?

Mr. Tobriner: There is only one thing, gentlemen. I am informed that these people did not come down to the plant until the middle of the morning, after the other people were working.

Mrs. Watts: We came down at 8:00 o'clock in the morning.

Trial Examiner Myers: That is what the man is going to testify.

Mr. Jennings: If it is disputed, Mr. Examiner, I would rather call the witness.

Mr. Tobriner: On that one point there is a question.

Mr. Jennings: The stipulation has already been entered into that the ladies who were here would testify that they came about 8:00 o'clock in the morning. If there is any dispute about that, I would certainly like to put them on.

Trial Examiner Myers: They did not go to work on the 21st, did they?

Mr. Tobriner: There is a question in my mind as to whether they appeared in time to make a showing for the job. That is, if they just came down and heard something and did not really attempt to get the job; I don't know whether they made any proper demand.

Trial Examiner Myers: Is that your contention, that Mr. Fordham said they were discharged because they did not get there on time? Is that your contention? [200]

Mr. Tobriner: No. My contention is whether they made a proper report to get the job, or whether they came and heard something and were discharged, and just left without ever demanding the job. There is that question.

Trial Examiner Myers: What were they told on the 20th?

Mr. Tobriner: Mr. Jennings, you might state that.

Mr. Jennings: On the 20th, Mr. Examiner, they would testify that there was a picket line and they could not get through.

Mr. Tobriner: They were told nothing.

Trial Examiner Myers: And on the 21st, what were they told?

Mr. Jennings: On the 21st the ladies went through the picket line. The gentlemen were stopped and did not go through, and they heard Mr. Fordham make the statement.

Mr. Tobriner: That is the point I am getting to. This R. E. Rearick is one of the gentlemen. That is right, is it not?

Mr. Jennings: Yes.

Mr. Tobriner: I think there is a question as to whether he did go down and was told that he had no job. There is a question of fact there, I think, or, whether he just was there with the group and then just assumed that he had made his showing.

Mr. Jennings: I might suggest, Mr. Examiner, that this seems to be a matter with which the company should be concerned.

Trial Examiner Myers: You had better call the witness.

Off the record.

(Discussion off the record.)

Trial Examiner Myers: Call your witness.

Mr. Jennings: Harlie Frischkneckt.

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### HARLIE FRISCHKNECKT

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

#### Direct Examination

Trial Examiner Myers: What is your name, please?

The Witness: Harlie Frischkneckt.

Trial Examiner Myers: Will you please spell your entire name?

The Witness: H-a-r-l-i-e F-r-i-s-c-h-k-n-e-c-k-t.

Trial Examiner Myers: Where do you live, sir?

The Witness: I live in Turlock.

Trial Examiner Myers: You may be seated, sir.

Q. (By Mr. Jennings): Where are you employed?      A. G. W. Hume Company.

Q. How long have you been employed there?

A. Well, right after I got out of the Service, I started to work the 11th of April, 1945.

Q. Were you a regular worker or a seasonal worker?



(Testimony of Harlie Frischknecht.)

A. Well, I was a regular worker. I worked steady.

Q. Where were you employed? [202]

A. At the Hume Company, in the warehouse.

Q. You worked in the warehouse?

A. Yes.

Q. Prior to the time you went to work in the spring of 1945, were you required to sign an A.F.L. clearance?

A. Well, no, I went in the Service and I worked there my time off just a little bit in '44, and they never—I never had to join a union, or anything, as long as I have been in the Service, but after I got out, why, they made me join.

Q. You signed a clearance after you got out, or did you sign an application?

A. I just joined the union after I got out.

Q. When did you join the union?

A. Well, around the 11th of April, in '45.

Q. In August of '45——

Trial Examiner Myers: The 11th of April or the 11th of August?

The Witness: I think it was the 11th of April.

Trial Examiner Myers: That is the first day that you went to work with Hume after you got out of the Army?

The Witness: That is right.

Trial Examiner Myers: I thought you said August. I am sorry.

Q. (By Mr. Jennings): In August of 1945 did

(Testimony of Harlie Frischknecht.)

you attend a meeting at which you were told that you must sign another clearance with the A.F.L.?

A. Well, in August, when we reported to work, why, Mr. Granberg, the fellow in charge of the warehouse, told us that we had to get a clearance slip through the A.F.L. in order to work, and he told us to go over back to the payroll office, and they had an A.F.L. representative there who would sign us.

Q. What was his job?

A. I believe he is the Superintendent of the Warehouse.

Q. Then did you go over and sign a clearance?

A. Well, I went over there.

Trial Examiner Myers: Over where?

The Witness: Over in back of the payroll office, where this A.F.L. man was that had all the clearance slips, and I told him that I would not just sign a clearance slip, and he made me sign a payroll check-off, too. And I told him, well, I did not want to get mixed up with the Teamsters. He kind of got kind of mad. He says, "Well, you have just been listening to somebody," he says. "You haven't got a mind of your own."

I told him, "Well, all I want to do is work."

He made me sign, so I signed the payroll check-off and clearance slip, and went over and went to work.

Q. Thereafter did you sign any revocation of it?

A. Yes.

Q. How long after?

(Testimony of Harlie Frischknecht.)

A. Well, right away, I guess, some time during the same day.

Q. Did you ever sign a designation of the F.T.A.-C.I.O. pledge card?           A. Yes. [204]

Q. About when?

A. Some time in August, I think.

Q. 1945?           A. Yes.

Trial Examiner Myers: After this incident with the A.F.L. man?

The Witness: Yes.

Q. (By Mr. Jennings): On November 20th were you working, in 1945?

A. Well, we went to work—we went in and worked a couple of hours, I guess, something like that.

Q. What happened?

A. Well, they had a picket line out in front of the place, and we went on down to the warehouse and went in and went to work, and then later Mr. Hume come in and said that we was all temporarily laid off. He told us to go on outside and told us to hang around.

Q. Did he tell you why you were temporarily laid off?

A. Well, I guess because we did not pay dues to the A.F.L.

Q. Did he say?

A. I don't recall right now.

Q. Was there any discussion about boycott or anything of that sort?

(Testimony of Harlie Frischknecht.)

A. Oh, I heard a lot of talk about it, but I never paid any attention to any of it.

Q. After Mr. Hume made that statement to you, that you should hang around, what did you do?

A. Well, we stayed up there in front of the warehouse door there for a while, and noticed a bunch of them going down toward the boiler room, and I figured they were just spreading out, so I went across the street to Hume's cabin, where I lived, and just went home.

Trial Examiner Myers: Who was spreading out?

The Witness: Well, I noticed the workers were going on down toward the boiler room, some of them sitting in cars, and I just figured that part of them was going home, and I went, too.

Q. (By Mr. Jennings): Did you see Mr. Heagle after that?

A. Not Mr. Heagle, not that I remember.

Q. Did you find out whether or not your name was read off the list?

A. Well, it—I might say, the following Monday I was standing out on the sidewalk in front of the Hume Company office, and Tom here said that my name—he had the list, and he read it off, and he said my name was not on the list.

Trial Examiner Myers: Tom who?

The Witness: Birchall.

A. (Continuing): And he read it off. He had 'Harlie Crutchford,' or something, on there. [206]

Q. Cruikshank?

(Testimony of Harlie Frischknecht.)

A. Cruikshank, or something that wasn't my name, and I did not see how my name was to be on there. I had been on the payroll at Hume's office about seven or eight months, and I told the A.F.L. men my name, and they took down my name and where I worked, so if either one of them made it up, I can't see how they misspelled it that far.

Q. You did not think it was you? A. No.

Q. Did you go back to work then?

A. No. I waited around, went over there and reported for work, and they says, "All right, go to work."

I worked until some time in the morning, and the A.F.L. man come around and wanted to know if I was going to go up before a board and pay my back dues, and everything, and I talked with him there quite a while, and he said he would vouch for me if I wanted to go into the A.F.L., and I told him I would think it over, and when noon come I got to thinking about it, and I found out we would have to pay dues to the A.F.L., so I just left and never reported back to work any more, because I did not figure on paying A.F.L. dues.

Q. Who was your foreman? You say Granberg? A. Yes.

Q. Did you talk to him about this matter?

A. No, I didn't, because they told me before if we did not sign up A.F.L., we would not be able to work. [207]

Q. Who were you told that by?

(Testimony of Harlie Frischknecht.)

A. Well, it stood to reason. We was discharged when we did not sign up.

Trial Examiner Myers: What date did you say that conversation took place with the A.F.L. man about vouching for you?

The Witness: Oh, he said that if I did not go to the meeting before the board, he said he would vouch for me. That was Mr. Evans. He said he would say I was in good standing and did not spread CIO propaganda, and stuff.

Trial Examiner Myers: When?

The Witness: That was that Monday I was put back to work.

Q. (By Mr. Jennings): About the 26th of November?

A. Somewhere around in there.

Q. That was a Monday?

A. That was a Monday, the following Monday after we got discharged from Wednesday or Thursday, whatever it was.

Trial Examiner Myers: What board did he say?

The Witness: Well, he said if we went back to work we had to go before some readjustment board, or something, of the A.F.L., to see whether they wanted to let us back or whether they did not want to let us back.

Q. (By Mr. Jennings): Prior to the time that you checked out on the 26th of November, did you talk to your foreman, Mr. Granberg?

A. No, I never even checked out.

Q. Did you tell him you were checking out?

(Testimony of Harlie Frischknecht.)

A. Never even checked out; just took off.

Trial Examiner Myers: Do you know this man's name, the representative of the A.F.L.? You say he is a representative?

The Witness: Which man was that?

Trial Examiner Myers: The man who was going to vouch for you.

The Witness: Oh. That was Mr. Evans.

Trial Examiner Myers: What?

The Witness: Mr. Evans; Robert Evans.

Trial Examiner Myers: E-v-a-n-s?

The Witness: Yes.

Q. (By Mr. Jennings): On the 21st of November, did you go over to the plant with the rest of the men and try to get in to work? A. Yes.

Q. Did you succeed in getting inside the plant?

A. Well, we had it all fixed up, if they went to work at 8:00 o'clock, we decided to go down about quarter till eight. A whole bunch gathered in front of the office, went through a group outside, a bunch of people standing around, went in the inside, and some of the women got through and some of the men tried to get through, but the A.F.L. had a line across there, locked arms, and we did not get very far. [209]

Q. Did you get through?

A. Well, I got around through the side, after a scuffle.

Q. Did you see any official of the company inside?

(Testimony of Harlie Frischknecht.)

A. Well, not until they stopped—the guard there halted us, and he said that he would get an official, and Mr. Fordham come out and he told us that we did not have any job, and told us to get out.

Q. Did you leave then?

A. Yes, we left and went back in front of Hume's office.

Trial Examiner Myers: What time did Mr. Fordham make that statement?

The Witness: Well, it was in the morning. We was there at quarter to eight, and we started over around 8:00 o'clock. I don't suppose it was much over 15 after 8:00, because we were all going to be on time to go to work.

Q. (By Mr. Jennings): Do you remember anything else that Mr. Fordham said, other than what you have related?      A. No.

Q. Can you tell me why you left the plant on November 26th?

Mr. Tobriner: Objected to.

Trial Examiner Myers: Overruled.

A. Well, I left the plant because I had been telling him all the time that I wasn't going to pay A.F.L. dues, and I told him my name wasn't on the list and I did not have any reason to quit. I thought of going maybe of my own accord, but I found out the same thing, that we had to pay in order to stay there, so I did not stay.

Q. Had any company official ever told you that you had to pay dues to the A.F.L. in order to work?



(Testimony of Harlie Frischknecht.)

A. No, they never said we had to. They asked us to, but they never said we had to.

Q. Who asked you?

A. Well, I recall Mr. Hume come around and seen all of the workers in the warehouse, and he asked us to string along with him until the 1st of March, and then we could vote to take up with any union we wanted to. He did not say we had to join.

Q. On the 26th of November, did you understand that you could continue to work without paying your dues to the A.F.L.?

A. Well, I did not quite understand it that way. I thought maybe that I could go to work, but I could not see why my name was not on the list. My name, if it was on the list, I would have knew that I wouldn't be able to work without paying A.F.L. dues, but when they said my name wasn't on the list, I couldn't figure out why I was any different from anybody else. I went back to see if I could work without paying the A.F.L. dues.

Mr. Jennings: Mr. Examiner, I am somewhat embarrassed. I notice now another clerical error in the Complaint. The name of Harlie Frischknecht appears on the Charge, but was omitted through clerical mistake from Appendix A attached to the Complaint. [211]

Trial Examiner Myers: I thought he was mentioned in a separate paragraph of the Complaint.

Mr. Jennings: I believe that is correct. I take back what I said.

(Testimony of Harlie Frischknecht.)

Mr. Edises asked me about that, and I had forgotten for the moment that he was specifically named along with Mr. McVay.

Q. (By Mr. Jennings): Did you ever receive an offer to reinstate you, Mr. Frischknecht?

A. To reinstate me where?

Q. At the Hume Company.

A. To come back to work, you mean, with the rest of them?

Q. Yes.

A. I never got a notification. The rest of them got them, calling them back to work on the 7th of February, but I went back on the 7th or 8th, whichever it was.

Q. The 7th of February? A. Yes.

Q. Did you ask Mr. Hume to reinstate you?

A. No. I stood around out there to see if I could go to work, and they said the ones that had letters could work, and I started walking across the street. Mr. Montgomery come over, and he said he would find out the reason I could not work.

Trial Examiner Myers: Who is Mr. Montgomery?

The Witness: He is one of the CIO representatives.

A. (Continuing) And we went over to Mr. Hume's office, and we walked in the office, and right after we entered the door, Mr. Hume told me that I could report to the warehouse for work, so I immediately left and went to report to the warehouse.

(Testimony of Harlie Frischknecht.)

Trial Examiner Myers: You have been working there ever since?

The Witness: Yes, sir.

Q. (By Mr. Jennings): Since you have been working, has any representative of the AFL or Teamsters Union approached you with regard to joining that organization? A. Yes.

Q. During working hours? A. Yes.

Q. On how many different occasions?

A. Well, three that I know of.

Q. When?

A. Well, I work at night, and one night——

Trial Examiner Myers: He means, what dates?

The Witness: Well, I don't know.

Q. (By Mr. Jennings): Approximately what time since February 7th, about when?

A. Well, about—oh, I would say the middle of the week we first started canning spinach; somewhere around in there.

Q. That would be, then, two or three times within the last two or three weeks? [213]

A. Well, the shop steward back there has been after us, said he would kind of like to have us come over, sign over, and it was just the one time that there was any other person.

Q. When was that?

A. Well, it was just at night.

Q. How long ago was that?

A. Well, it was about in the first week of spinach, I believe it was.

(Testimony of Harlie Frischknecht.)

Q. Some time after the 25th of March?

A. Yes.

Q. Who talked to you then?

A. I don't know the man's name.

Q. Was he an employee of the plant, or an outsider?

A. No, he was an outsider.

Q. Were you working at the time?

A. Yes, I was working.

Q. What did he ask you to do?

A. Well, he asked me to sign a clearance with the AFL, and I told him, no, I did not care to sign a clearance. I understood we did not have to pay AFL dues, and I read a telegram down on a bulletin board in the warehouse, from the NLRB, or somebody, that said that all the canneries were not to associate with either union until after the new election, and I asked him about that, and he said there wasn't going to be any election, so I said, "Who is right? You or the government?"

Q. Was that all that was said?

A. Yes.

Q. Did you sign up?

A. No, I never signed up. I am still working.

Mr. Jennings: That is all.

Trial Examiner Myers: Mr. St. Sure?

#### Cross-Examination

By Mr. St. Sure:

Q. Did you take any other job in the interval between the 26th of November and the 7th or 8th of February?

(Testimony of Harlie Frischknecht.)

A. Oh, I worked for a farmer, Mr. Murphy, over toward Hickman, oh, about a little over a week, something like that.

Q. Did you do any other work during the period?

A. No. Worked around home, though.

Q. How old are you?           A. 22.

Q. How much did Farmer Murphy pay you for the week?           A. How is that?

Q. How much did you earn on this farm job?

Mr. Edises: Objected to as immaterial, as a matter which would go to the question of compliance.           A. I got \$1 an hour. [215]

Mr. Edises: Just a minute.

Trial Examiner Myers: I will overrule the objection. It may be relevant for compliance, if the Board directs that it should be used.

You may go ahead.

Mr. St. Sure: I will not urge it. It is all right with me.

Trial Examiner Myers: I want you to protect yourself on the record.

Mr. St. Sure: Sometimes it is just a matter of trying to find out, and sometimes it is not easy to find out. That is the reason I asked.

Trial Examiner Myers: Go ahead.

Mr. St. Sure: That is all right.

Trial Examiner Myers: You have the answer.

The Witness: I don't remember whether I worked——

Trial Examiner Myers: How much did you get an hour?

(Testimony of Harlie Frischknecht.)

The Witness: I got \$1 an hour, and I worked 8 hours a day, I think. In total I only earned around \$50 or \$55.

Mr. St. Sure: That is all.

Trial Examiner Myers: Any other questions, Mr. St. Sure?

Mr. St. Sure: Just one other question I would like to ask.

Q. (By Mr. St. Sure): On the 26th of November, when you left, you said you did not bother to check out, just took off and left the job?

A. Well, the AFL man said if I did not pay dues to the AFL and do what they wanted me to do, I would not be able to work, and the rest of them, they had already told them they wouldn't let them work, and if they was temporarily laid off, I figured I was in the same thing.

Q. What time of the day did you leave the job?

A. I left at noon.

Q. Pardon me? A. I left at noon.

Q. You just did not come back after lunch?

A. No. I was going to go back. Mr. Hume wasn't in his office, or anything. I was going to talk to him. So, I just stayed on and went up to see Mr. Montgomery, and I went back for 4 hours, and they wanted me to pay dues to the AFL, pay back dues, and that is what I had been refusing to do all the time.

Q. On the 26th of November, the day that you walked off or left, around noon, until the 7th or 8th of February, when you went back, did you

(Testimony of Harlie Frischknecht.)

ever get in touch with anybody at the plant to inquire whether you had a job or did not have?

A. I was in touch with Mr. Heagle and Mr. Montgomery. I asked them to go back to work.

Q. Did you talk to anybody in the plant, Mr. Hume or Mr. Birchall or Mr. Fordham, or anybody else connected with the plant? A. No.

Q. You did not? A. No. [217]

Q. You did not inquire of any of them as to whether you had a job or not, or whether walking off protected your status, or whether you could come back, is that right?

A. I talked to Orville Hopkins down there, one of the bosses, and he said I would not be able to work until I joined up.

Q. Who was this you talked to?

A. Orville Hopkins.

Q. Who was he?

A. He was one of the assistant agents in the warehouse.

Q. One of the what?

A. One of the—well, he is one of the bosses. He is just a—I don't know; an assistant.

Trial Examiner Myers: Is he another party to whom you refer? What is his last name?

The Witness: I think Hopkins.

Trial Examiner Myers: Hopkins.

Q. (By Mr. St. Sure): When did you talk to him?

A. Well, I seen him downtown and asked him if there would be any chance of coming back to work.

(Testimony of Harlie Frischknecht.)

Trial Examiner Myers: When?

The Witness: Well, it was right after the Monday that I quit, and he said there would not be any chance unless we would sign up with the AFL, and I told him well, I did not figure on doing that.

Mr. St. Sure: That is all.

Trial Examiner Myers: Mr. Edises?

Mr. Edises: Just one question.

Q. (By Mr. Edises): Mr. Frischknecht, this picket line of the Teamsters which you say prevented the men from getting into the plant on this occasion, was that picket line inside the company's grounds, or was it outside the company's grounds?

A. Oh, it was way in, next to where the spinach was, way inside. Some of the guys was fighting around the spinch, you know, and it is soft, and a couple of guys would get knocked down.

Q. (By Mr. Tobriner): You don't know whether the picket line was the Teamsters or any other AFL union, do you?

A. Well, all I took it for was AFL.

Trial Examiner Myers: Any redirect examination?

Mr. Jennings: No.

Trial Examiner Myers: You are excused, Mr. Frischknecht. Thank you very much.

(Witness excused.)

Trial Examiner Myers: We will stand adjourned now until 10:00 o'clock tomorrow morning.



(Whereupon, at 5:45 o'clock p.m., Wednesday, April 10, 1946, the hearing was adjourned to Thursday, April 11, 1946, at 10:00 o'clock am.) [219]

Thursday, April 11, 1946

Trial Examiner Myers: Are you ready to proceed, gentlemen?

Mr. Jennings: I am ready.

Mr. Agee: Yes, sir.

Trial Examiner Myers: Will you call your next witness, please, Mr. Jennings?

Mr. Jennings: Yes, I will call Mr. McVay.

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CLARENCE McVAY

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name, sir?

The Witness: Clarence McVay.

Trial Examiner Myers: Will you please spell your last name for the record?

The Witness: M-c-V-a-y.

Trial Examiner Myers: Where do you live, Mr. McVay?

The Witness: In one of the cannery cabins; No. 8.

Trial Examiner Myers: You may be seated, Mr. McVay.

(Testimony of Clarence McVay.)

Q. (By Mr. Jennings): Where are you employed at the present time, Mr. McVay?

A. Gaddis Service, Turlock.

Q. Were you at one time employed by the G. W. Hume Company in Turlock? A. I was.

Q. Were you a regular worker or a seasonal worker? A. Seasonal worker.

Q. When were you first employed, what year?

A. For the last year, '45.

Q. 1945. Were you working on the 20th of November of 1945? A. Yes, sir.

Q. When the picket line was placed in front of the plant? A. Yes, sir.

Q. Did you go through the picket line, or were you stopped? A. I went through.

Q. Did you go through on the 20th, or was it the 21st that you went through?

A. I don't remember the date, sir.

Q. All right. The day that the other people were stopped, did you go through and work?

A. I did.

Q. Did you continue to work?

A. Until the 7th of December.

Q. Of 1945? A. Yes, sir.

Q. At the time you were employed, did you sign a clearance for the AFL? A. I did. [224]

Q. Did you sign a voluntary dues deduction slip? A. I don't know—

Mr. Jennings: May this be marked as Board's exhibit next in order, Mr. Examiner?

Trial Examiner Myers: Board's Exhibit No. 10.

(Testimony of Clarence McVay.)

(Thereupon the document above referred to was marked Board's Exhibit No. 10 for identification.)

Mr. Jennings: I might state that this is merely a form, and it is for the local in Stockton rather than Modesto. If I can get a form which was used here, I would prefer it.

Trial Examiner Myers: Very well.

Q. (By Mr. Jennings): I will show you a form of authorization for dues deduction which is marked Board's Exhibit 10. Did you sign one when you were employed?

A. I did, but I told them when I signed it I did not want to. It was under protest.

Q. After you signed it, did you revoke it?

A. I did.

Q. Who told you that you had to sign it?

A. I cannot tell you his name. It was the Union representative that was there at that time.

Q. Did you pay dues to the AFL Union?

A. I did not.

Q. At the Turlock plant, the Hume plant?

A. I did not.

Q. On December 7th were you working, 1945?

A. I was.

Q. Where were you working?

A. Well, I was checking cans in the Canning Department.

Q. Was that your regular job?                      A. It was.

(Testimony of Clarence McVay.)

Q. Did any representative of the Union or of the Management speak to you about joining the Union that morning?      A. Yes, sir.

Q. Who spoke to you?

A. Well, it was the same representative. I cannot tell you the name, because I don't know.

Q. Was it Mr. Evans?

A. It was a slim, wavy-haired fellow. I can't tell you any of their names.

Mr. Tobriner: We will stipulate it was Mr. Robert Evans.

Q. (By Mr. Jennings): What did Mr. Evans tell you?

A. He asked me why I had not joined up, or asked me if I belonged to the AFL, had a clearance slip, and I told him no.

Q. What did he say?

A. He said, "You have to sign up with us or get out."

Trial Examiner Myers: Where did this conversation take place? [226]

The Witness: Right in the cannery there at my post, where I was working.

Q. (By Mr. Jennings): Mr. McVay, when you first went to work did you sign a slip similar to AFL Exhibit No. 1?      A. Yes.

Q. When you went to work did you give that to your foreman?      A. No.

Q. Did he ask you for it?

A. I don't believe he did. I don't remember.

(Testimony of Clarence McVay.)

Q. Was anyone else there when Mr. Evans was speaking to you?

A. Well, my foreman was there.

Q. What was his name?

A. Verne Gustaffsson.

Q. Was anybody else there besides yourself, Mr. Gustaffsson and Mr. Evans?

A. Well, not at first, there wasn't.

Q. Did somebody come in later?

A. Mr. Hume—well, his last name was "Art"; the one we call "Art."

Q. Mr. Gallardo?

A. They came back later.

Q. What happened when Mr. Hume and Mr. Gallardo came back? [227]

A. Well, the Union man taken them to one side and talked to them a few minutes, and then came back. He told me I would have to sign up with him or quit my job.

Trial Examiner Myers: Who said that?

The Witness: The Union representative.

Q. (By Mr. Jennings): What did you say to that?

A. I just told him I could not sign up with him.

Q. Did he ask you to pay dues?

A. Yes, sir.

Trial Examiner Myers: Was that Mr. Evans, the Union representative?

The Witness: Yes, sir.

Q. (By Mr. Jennings): Did you refuse?

A. I did.

(Testimony of Clarence McVay.)

Q. Then what happened?

A. Well, he said I would have to quit so he told Verne to give me my time card.

Q. Told who?

A. This Verne, I can't speak the last name.

Q. Gustaffsson?

A. Yes. He gave me my card, and I put it in the box and went on out.

Q. Were Mr. Hume and Mr. Gallardo there at the time this happened?

A. No, they had left.

Q. Did either Mr. Hume or Mr. Gallardo say anything to you?

A. Mr. Hume told me that I might just as well sign up, that they could tie up the whole situation again like they did before, stop the trucks from delivering spinach.

Q. Was that all that he said?

A. Well, I think so.

Q. Did Mr. Gallardo say anything to you?

A. No, sir.

Q. Did either one of them say anything to Mr. Evans in your presence?      A. No.

Q. When you say that the foreman took your card out of the rack, what did he do with it?

A. Well, he punched my time out on it, see? He had his time cards in his pocket, so he taken the cards and punched my time and handed it to me.

Q. He handed it to you?      A. Yes.

Q. What did he tell you to do with it?

(Testimony of Clarence McVay.)

A. Well, he did not tell me.

Q. What did you do with it?

A. I put it in the box where we were supposed to drop them.

Q. What did you understand Mr. Gustaffsson intended by giving you your card? [229]

A. Well, it was plain enough. He punched my time for quitting, then, at that time of the morning.

Q. You were still working?

A. About 10:00 o'clock, and he punched my time out at 10:00 o'clock.

Q. Did you thereafter get your closing check from the Company? A. I did.

Q. Your final check. Have you worked for them since? A. I have not.

Q. At that time were you living in a company-owned home? A. Yes, sir.

Q. Was any effort made thereafter to evict you from that home? A. Yes.

Q. How shortly thereafter?

A. Well, I got the first notice to vacate the 4th of February.

Q. Have you ever been offered your job at the plant? A. No, I haven't.

Mr. Jennings: That is all.

Trial Examiner Myers: Mr. Agee?

### Cross-Examination

By Mr. Agee:

Q. On February 4th, when you got this notice

(Testimony of Clarence McVay.)

to vacate the company home, were you working then?      A. No, sir.

Q. Had you worked between December 7, 1945, and the time of receiving this notice to vacate on February 4th?      A. No, sir.

Q. When did you first commence to work after February 4th?

A. Where did I first go to work at? At Gaddis Service in Turlock.

Q. When did you first commence working?

A. I do not remember the date exactly. I can tell you it pretty close.

(After consulting document) It was around the 15th of January.

Q. Of this year, of course?      A. Yes, sir.

Q. At the time that you started to work at the Gaddis Service Station, were you living in the company home at that time?      A. Yes, sir.

Q. It was some two or three weeks after you commenced working at Gaddis that you first got a notice to vacate the company home, is that right?

A. Well, it was the 1st of February when I got the notice.

Q. The substance of what Mr. Hume told you was that what he was trying to do was to keep the plant in operation, is that correct?

A. Well, probably so. However, he gave me the impression that he wanted me to sign up with the AFL.

Q. That was the—go ahead. Did you finish?

A. Yes, sir.



(Testimony of Clarence McVay.)

Q. That was the one conversation that you had with Mr. Hume about this, and then in that conversation he added that he thought that unless the men did sign up, that the AFL would stop the operation, as they had done before?

A. No, sir. That was not what he said. He said that he thought they could. He did not say he thought they would.

Q. Didn't you say—at least, my notes say that Mr. Hume said that you might as well sign up, or they would stop the trucks again, like they did before? A. They could stop the trucks.

Q. You understood by that, that he was referring to the AFL, did you not? A. Yes, sir.

Q. You have stated, then, all of the conversation that you had with Mr. Hume on this subject?

A. Well, in regard to the cabin, I asked him, if I would go ahead working, would he let me keep the cabin, live in it?

He said he would guarantee me a cabin, and I said, "Well, if I pay you rent and don't sign up with them, what about it?" He said, "You will have to get out." [232]

Q. You knew and understood that the company houses were for employees working for the company, did you not? A. Yes, sir.

Q. And that they were limited in number? That is, there were a lot of people that desired those houses to live in? You knew that, did you not?

A. Yes, sir.

Mr. Agee: That is all.

(Testimony of Clarence McVay.)

Mr. Tobriner: No questions.

Mr. Edises: No questions.

Trial Examiner Myers: Did you pay any rent while you lived in that house?

The Witness: No, sir.

Trial Examiner Myers: Even though you were working for the company, you did not pay any rent?

The Witness: No, sir.

Trial Examiner Myers: After December 7th?

The Witness: I offered to pay rent, and he said he did not want rent.

Trial Examiner Myers: Are there any other questions, gentlemen?

(No response.)

Trial Examiner Myers: You are excused, Mr. McVay. Thank you.

(Witness excused.)

Mr. Jennings: Mr. Miller.

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### ARCHIE MILLER

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

#### Direct Examination

Trial Examiner Myers: What is your name, sir?

The Witness: Archie Miller.

Trial Examiner Myers: How do you spell your last name?

(Testimony of Archie Miller.)

The Witness: M-i-l-l-e-r.

Trial Examiner Myers: Where do you live, Mr. Miller?

The Witness: I live in Mr. Hume's cabin, Cabin 36.

Trial Examiner Myers: You may be seated, sir.

You may proceed, Mr. Jennings.

Q. (By Mr. Jennings): Mr. Miller, where are you employed?

A. Hume's cannery, in the warehouse.

Q. Are you a regular worker or a seasonal worker?

A. Well, I worked there in '42, through peaches. Then I worked there through peaches and spinach last year, in '45.

Q. At the present time are you a regular worker or a seasonal worker?

A. Well, I hope I am a regular worker.

Q. Have you worked in the warehouse all the time? A. Yes, sir.

Q. Were you at work on the 20th and 21st of November, 1945?

A. Yes, sir, up until that time.

Q. Were you off part of that time because of an injury to your hand? A. Yes, sir.

Q. Approximately when did you injure your hand?

A. Well, it was some time in November.

Q. The early part of November? A. Yes.

(Testimony of Archie Miller.)

Q. When was your hand well enough so that you could work again?      A. The 15th of December.

Q. 1945?      A. Yes.

Q. Did you go down to the plant on the morning of November 21st, when all of the regular workers tried to go in? Do you remember the morning you were stopped?      A. Yes, I was there.

Q. Did you try to go inside the plant, or did you just remain outside?

A. Well, I just remained outside.

Q. Did you hear Mr. Fordham speak to the employees?      A. No, sir, I did not.

Q. Did any representative of the company tell you that you had to pay dues in the AFL in order to work?

A. Well, they didn't tell anyone that. [235]

Q. Were you present in front of the boiler room on November 20th, when Mr. Heagle read a list of names?      A. Yes, sir.

Q. I will show you Board's Exhibit 9, which has a list of names in it. Among those names is the name of Archie Miller.

A. Yes, mine was the fifth from the top at that time.

Q. Did you see that list?      A. Yes, sir.

Q. Did you hear Mr. Heagle read it?

A. Mr. Hume read it at the time.

Q. Mr. Hume read it?      A. Yes.

Q. Did Mr. Hume make any statements to the employees?

(Testimony of Archie Miller.)

A. Well, the only thing that he said at the present time was that we would have to stay out until it was settled.

Trial Examiner Myers: What was that last answer?

(The answer was read.)

Q. (By Mr. Jennings): Did you try to go back to work after your hand was better, Mr. Miller?

A. Well, in a way I didn't.

Q. Did you speak to any representative of the company? A. Yes, sir.

Q. Whom did you talk to?

A. I talked to Tom there. I saw him down on the street.

Q. Mr. Birchall? A. Yes.

Q. Approximately when was that?

A. Well, I think it was about the 12th or the 13th. It was just a day or two before I got my arm released.

Q. Did you ask him about going back to work?

A. Well, he asked me if I was on that CIO list. I told him I didn't know for sure whether I was still on it or not, so he went in the office and looked it up, and I were.

Q. You were on the list? A. Yes.

Q. Did you understand from that that you could or that you could not work? A. Well—

Mr. Tobriner: Objected to. We have enough in here without going into that.

Trial Examiner Myers: Sustain the objection.

(Testimony of Archie Miller.)

Q. (By Mr. Jennings): What else did you say and what else did Mr. Birchall say?

A. Well, that is all that was said about it. That is the only time I went there.

Q. What was the purpose of your going there?

A. Well——

Q. Why did you go back and talk to Mr. Birchall?

A. Well, I wanted to work. That was the only thing I wanted to do. [237]

Q. And you were not put to work at that time?

A. No.

Q. What did you do after that?

A. I went back to New Mexico.

Q. How long were you there?

A. I was there—I arrived back here the 1st day of March.

Q. The 1st of March?           A. The first day.

Q. Then after you got back here, did you apply for work again?           A. Yes, sir.

Q. Were you re-employed?           A. Yes, sir.

Q. On what date?

A. I believe it was the 7th or 8th. I wouldn't be for sure.

Q. Right after you got back here, you were re-employed?           A. Yes.

Trial Examiner Myers: The 7th or 8th of what?

The Witness: Of March.

(Testimony of Archie Miller.)

Q. (By Mr. Jennings): Were you working in August of 1945, Mr. Miller? A. Yes, sir.

Q. Do you recall at that time having been requested to sign a clearance slip similar to AFL Exhibit 1? A. I have one.

Q. Did you secure that clearance slip at that time?

A. Yes. I had to have that before I could go to work.

Q. May we see it, so that we can see the date on it? A. I may have lost it.

(After examining documents.) I do not think I have it.

Q. Did you secure one in 1945?

A. Yes, sir.

Q. Before you went to work? A. Yes, sir.

Q. Do you recall having signed another one in August of 1945?

A. That was the only one I signed.

Q. You just signed the one? A. Yes, sir.

Q. Were you ever required to sign the dues deduction card similar to this slip here, which is Board's Exhibit 10 for identification?

A. No, sir.

Q. When did you go to work in 1945, by the way?

A. Some time in July. I went to work when they started peaches, the first day that they started peaches.

(Testimony of Archie Miller.)

Q. Did you ever sign up in the FTA-CIO, sign a pledge card?      A. No, sir.

Q. I don't mean join, but did you sign a little card designating the FTA-CIO?      A. Yes, sir.

Q. When was that? [239]

A. I don't know. When I first started. I was with the rest of the bunch back there in the warehouse. I don't know what date.

Mr. Jennings: That is all.

Trial Examiner Myers: Cross-examination?

Mr. Agee: No questions.

### Cross-Examination

By Mr. Tobriner:

Q. Mr. Miller, going back to November 21st, when you saw what happened, could you describe for us briefly what the entrance to the plant is, how big it is, the gate you go through or the door you go through?

A. Well, I don't know. There are several doors to go in.

Q. The door these people were going to, or through which they customarily went?

A. Well, the one that they go through at the front is pretty wide.

Q. How about the inside door?

A. Well, it is too, at the front.

Q. At what door or near what door were you standing when you observed what happened on November 21st, the inside or the outside door?

A. Well, I was standing on the outside. At that



(Testimony of Archie Miller.)

time I had my arm in a sling, and I did not have any business in there, because I could not work on the inside.

Q. Do you know about how many people were there at that door?      A. No, sir, I do not.

Q. Were there any AFL people there?

A. Yes, sir.

Q. About how many?

A. Well, I don't know. There was a pretty good crowd there. It would be pretty hard to judge.

Q. Did you see at any time any linking of arms so that people could not get by the door?

A. No. I wasn't there all the time, so I did not see any of that at the front gate.

Q. You did not see any such linking of arms on November 21st?

A. No, sir, I did not. I might not have been there right at that time.

Q. You were there how long?

A. Because I work in the warehouse, you know, and I am not up at the front very often.

Q. How long were you at this gate on November 21st.

A. Well, I wasn't there but just a few minutes, and then I went back to the boiler room, and then from there I went back to the warehouse door.

Q. Did you see anybody prevented from getting into the plant, by physical force, that is?

A. I did not, back in the warehouse. I went on back there.

Q. You did not see anybody at the gate pre-

(Testimony of Archie Miller.)

vented by physical force from getting through, did you?      A. Not the few minutes I was there.

Q. You were there about what time? Can you place it, approximately?

A. Well, I don't remember now.

Q. Was it around 8:00 o'clock, 9:00 o'clock?

A. It was after 8:00.

Q. Pardon me?      A. It was after 8:00.

Q. Was it the usual time for people to go in?

A. Well, I think at that time they went to work at 8:00. I know we were in the back.

Q. Were the people going in at that time to work?

A. Well, some of them were already in; some of them wasn't.

Q. Some were already in?

A. Yes. Some was held up; some wasn't. I don't know why. It wasn't any of my business.

Q. You did not see anybody prevented by physical force from going in?      A. No, I didn't.

Mr. Tobriner: Thank you. [242]

Trial Examiner Myers: Any other questions, gentlemen?

Mr. Agee: No questions.

Trial Examiner Myers: You are excused, Mr. Miller. Thank you.

(Witness excused.)

Trial Examiner Myers: Will you call your next witness, please?

Mr. Jennings: Mr. Bobb, please.

JASPER J. BOBB

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name, sir?

The Witness: Jasper J. Bobb.

Trial Examiner Myers: Will you spell your entire name for the record?

The Witness: J-a-s-p-e-r J. B-o-b-b. I just usually use the initials.

Trial Examiner Myers: Where do you live, Mr. Bobb?

The Witness: I live at 115 Eye Street.

Trial Examiner Myers: Modesto?

The Witness: Turlock.

Trial Examiner Myers: You may be seated, sir. You may proceed, Mr. Jennings.

Q. (By Mr. Jennings): By whom are you employed, Mr. Bobb? A. Mr. Hume.

Q. G. W. Hume Company?

A. That is right.

Q. How long have you been employed by that company?

A. Well, as near as I know, I worked there since about '30 or '31.

Q. About 15 years? A. 15.

Q. Are you a regular worker or a seasonal worker?

A. Have been in the last 6 or 8 years.

(Testimony of Jasper J. Bobb.)

Q. You have been regular the last 6 or 8 years?

A. Yes.

Q. When you went to work in 1945, did you sign a clearance slip from the AFL Union?

A. Yes. That was before peaches.

Q. During the year 1945, did you sign more than one or just one?

A. I think I only signed the one.

Q. When you say "before peaches," was that in the early part of August of 1945?

A. Early part of August.

Q. Did you sign any agreement for the check-off of your dues?      A. I think I did. [244]

Q. Do you remember about when you signed that?

A. I think maybe at the same time.

Q. Did you thereafter sign a revocation of it?

A. I did.

Q. How long afterwards?

A. Oh, it might have been several days; a week.

Q. Were you working in November of 1945?

A. Yes, I was.

Q. There has been testimony here that on the 20th of November, employees were stopped by a picket line, that on the 21st there was some difficulty in front of the plant. Were you working at or about that time?      A. I was.

Q. Prior to those events, had you had any discussion with any representative of management with regard to payment of dues to the AFL?

A. No, I hadn't.

(Testimony of Jasper J. Bobb.)

Q. Did you have any discussion or conversation?

Trial Examiner Myers: Do not use the word "discussion."

Q. (By Mr. Jennings): Did you have any conversation with Mr. Gallardo with regard to paying dues to the AFL? A. Yes, I did.

Q. About when did that conversation take place?

A. I don't know. Around the 19th of November, I think.

Q. Where did it take place?

A. In the cook room.

Q. Were you working? A. I was.

Q. Who else was there at that time?

A. I think Mr. Neal was there. I don't know whether he was present right at that time.

Q. Neal Watts? A. Yes.

Q. What did Mr. Gallardo say?

A. He told me I would have to go up and clear with the Union, settle with the Union, and I told him I did not want to.

Q. What else did he say, if anything?

A. Well, he said, "That is up to you."

Q. Did he tell you what you had to do in order to settle with the Union?

A. Sign a clearance slip, I suppose.

Q. Did he tell you what you had to do?

A. No, he did not.

Q. Did you go to work on November 20th?

A. Yes.

Q. What time of the morning did you go to work?

(Testimony of Jasper J. Bobb.)

A. I believe we went to work at 8:00 o'clock.

Q. Did you get inside the plant on that morning?

A. Yes. [246]

Q. During the morning did any representative of management come in and talk to you about whether or not you were going to remain working?

A. Yes, I believe he did.

Q. Who came in?

A. It seems to me that there was—well, I don't know. There were several of them come along and said we were going to have to get out because our names were on the list, but I do not just remember if it was any officials of the cannery. I am pretty sure it was not.

Q. Was that statement made to you and Mr. Watts both?

A. It was made to me. I don't know about Mr. Watts.

Q. Do you know whether Mr. Gallardo, Mr. Fordham, Mr. Birchall, or Mr. Hume told you that?

A. I think it was Mr. Gallardo that told me to go see somebody in the boiler room, or go see if my name wasn't on there. He said that he thought we would all have to go out that had their names on the list.

**Trial Examiner Myers:** Talk up a little louder, please.

Q. Did you go down in front of the boiler room then?

A. No, I didn't. I kept working, but some of

(Testimony of Jasper J. Bobb.)

the others went down and came back and said we would have to go out.

Q. Did they tell you that your name was on the list?      A. Yes.

Q. How long did you continue to work? [247]

A. Oh, we worked about two hours, I believe, that morning.

Q. Then what happened?

A. Well, they all began picking up their tools, and things, and walking out, so I went out with the rest of them.

Q. Did you ever see the list of names?

A. No, I did not see the list.

Q. Showing you Board's Exhibit 9, there is a name there, "G. J. Bobb." Is that yours?

A. It should have been "J. J."

Q. On the morning of November 21st, did you go back to work?

A. We went back there about 7:30 or 8:00 o'clock.

Q. Did you try to get inside the plant?

A. Yes.

Q. Did you get inside?

A. Just got up on the porch.

Q. What happened then?

A. Well, they formed a line across the door entrance going in, the main door.

Q. Who formed a line?      A. AFL.

Q. Were you stopped, then, from going in?

A. Yes.

Q. How long did you remain there?

(Testimony of Jasper J. Bobb.)

A. Oh, I don't know. There was a lot of pushing and shoving around there, and I could not say just how long it was, but it was not long.

Q. During the time you were there, did you hear any company official talking to the employees?

A. Yes, I did. Mr. Fordham came up there.

Q. Did you hear what he said?

A. He said, "What are you fellows doing here?" And we told him we were reporting to work, and he said, "You fellows are fired. Get out of my place. Get off the place."

Q. Is that all that happened?

A. Yes. We went out then.

Q. Did you ever sign a pledge card in the FTA-CIO?      A. I did.

Q. When was that?

A. Some time during peaches. I don't just remember when.

Q. That would be some time in August?

A. August.

Trial Examiner Myers: '45?

The Witness: '45.

Q. Do you wear a CIO button at work?

A. I did at that time.

Q. From what time on? When did you wear that button?

A. After that, I guess it was. Well, after I signed up with them.

Q. After you were returned—strike that.

Were you ever offered reinstatement to your job?

A. Yes, I was. [249]



(Testimony of Jasper J. Bobb.)

Q. When did you go back to work?

A. It was on the 7th.

Q. February 7th, 1946?            A. Yes.

Q. After you returned to work, did anybody approach you at the plant to join the AFL Union?

A. Yes, they did.

Q. Were you working at the time?

A. No, I don't believe they did at that time.

Q. Since you have returned, has anybody talked to you about it?

A. Yes, they have now, since spinach.

Q. That is since about the 25th of March?

A. Yes.

Q. Who talked to you?

A. I don't know. It was a slender, dark-haired fellow.

Q. Were you working at the time?

A. Yes.

Q. On how many different occasions did he talk to you?

A. He did not talk to me. He just asked me if I had signed up. We didn't hold no conversation. I was working at the time, running a seamer, and he just asked me if I signed up, and I told him no.

Trial Examiner Myers: Was he connected with the company?

The Witness: With the Union.

Trial Examiner Myers: What Union?

The Witness: AFL.

(Testimony of Jasper J. Bobb.)

Q. (By Mr. Jennings): Did he say anything to that?

A. Well, he said, "You will be sorry," when I said I would not sign.

Q. Is that all he said?

A. That is all he said.

Mr. Jennings: That is all.

Mr. Agee: I have no questions.

Trial Examiner Myers: Any questions, Mr. Tobriner?

### Cross-Examination

By Mr. Tobriner:

Q. Mr. Bobb, you said that you revoked the dues deduction slip, I think you signed in '45, is that right? A. Yes.

Q. When you revoked it, you were working, were you not? A. Yes.

Q. You were on the premises? A. Yes.

Q. At that time you spoke to a representative of the CIO-FTA, did you not? A. Yes.

Q. This FTA representative asked you or suggested to you to revoke the dues deduction slip?

A. Yes. [251]

Q. And that was on the premises of the Company? A. I believe so.

Q. On November 20th you said lots of people started walking out. Why was that?

A. That was when we was asked to quit until the thing was settled.

(Testimony of Jasper J. Bobb.)

Q. Some people walked out whose names were not read off the list, is that right?

A. Not that I know.

Q. You don't know whether they all were on the list or whether they were not on the list, is that right?

Trial Examiner Myers: He said he did not see the list.

The Witness: That is right.

Mr. Tobriner: He did not see the list. That is all.

Trial Examiner Myers: Who was this CIO representative that talked to you about the revocation of the dues check-off?

The Witness: Irwin Heagle?

Trial Examiner Myers: Who?

The Witness: Irwin Heagle.

Trial Examiner Myers: Is he an employee of the company?

The Witness: Engineer, I think.

Trial Examiner Myers: Any other questions?

Mr. Tobriner: Just one question, if I may.

Q. (By Mr. Tobriner): That slip that you signed was a printed one to revoke the dues deductions?

[Answer not shown.]

Mr. Tobriner: That is all.

Q. (By Mr. Agee): Mr. Bobb, had you been a member of Local 22382?

A. I had been, yes.

(Testimony of Jasper J. Bobb.)

Q. And you were working there at the Hume Company plant in 1940, were you? A. Yes.

Q. And had worked there of course continuously every year since? A. Yes.

Q. You knew, did you not, that throughout those years the Hume Company had signed an agreement with the Local to which you were then affiliated?

A. Which I was then, yes.

Q. And you knew, of course, that your Local was chartered by the AFL, did you not?

A. Yes.

Q. So that at the time these events occurred in 1945, that you testified to, you knew that the Hume Company had a contract with the AFL?

A. I never saw the contract.

Q. But it was a matter of common knowledge among you and the rest of the workers that the company had such a contract, was it not? [253]

A. I suppose.

Q. And you knew that that contract required membership in the AFL in order to remain employed there?

Mr. Edises: Objected to as an incorrect statement of the facts, of the records.

Mr. Agee: I will withdraw the question and ask you this:

Q. (By Mr. Agee): Commencing with the year 1940, and going through the years 1941, '42 and '43, you knew that whenever an employee failed to maintain good standing in the AFL Union, that he was let go by the Company, did you not?

(Testimony of Jasper J. Bobb.)

Mr. Edises: I want to object to that. Presumably it is intended to be based on something in the record. The record does not indicate.

Trial Examiner Myers: I will overrule the objection. What was the question?

(The question was read.)

A. I presume so.

Mr. Edises: I will ask that the answer be stricken. The answer shows that the witness had no personal knowledge of any such thing.

Trial Examiner Myers: Overruled. Motion denied.

Q. (By Mr. Agee): During the year 1944, were you acquainted with Mr. Tomson, who was then the Business Agent for your Local, was he not?

A. Yes.

Q. During that year did you see Mr. Tomson on the premises of the Hume Company plant at a time when the plant was in operation?

A. He may have been there a time or two, yes.

Q. Did you ever notice, during the years from 1940 to 1944, inclusive, any employee working there at the Hume Company plant that continued to work without maintaining good standing with the AFL Union? A. I did not personally, no.

Q. Is it a fact that all of the employees that were there working with you that you knew about, did, during those years, maintain good standing with the Union? A. Yes.

Mr. Agee: That is all.

(Testimony of Jasper J. Bobb.)

Trial Examiner Myers: Any other questions, gentlemen?

Mr. Jennings: Nothing further.

Trial Examiner Myers: You are excused, sir. Thank you very much.

(Witness excused.)

Trial Examiner Myers: We will take a short recess. [255]

(Whereupon a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Myers: Are you ready to proceed?

Mr. Jennings: Ready, Mr. Examiner.

Trial Examiner Myers: Will you call your next witness, please?

Mr. Jennings: Mr. Frazier, please.

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### HUSTON F. FRAZIER

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

#### Direct Examination

Trial Examiner Myers: What is your name please?

The Witness: Frazier; H. F. Frazier, Huston F. Frazier.

(Testimony of Huston F. Frazier.)

Trial Examiner Myers: How do you spell your last name?

The Witness: F-r-a-z-i-e-r.

Trial Examiner Myers: Where do you live, Mr. Frazier?

The Witness: Turlock.

Trial Examiner Myers: You may be seated, sir. You may proceed, Mr. Jennings.

Q. (By Mr. Jennings): Mr. Frazier, where are you employed? A. In Hume's Cannery.

Q. In what capacity? What is your job?

A. Well, most anything, now. I work at anything I have to do.

Q. Are you a regular worker or a seasonal worker? [256]

A. Year round worker.

Q. How long have you been employed?

A. It will soon be three years.

Q. In 1945, were you required to sign a clearance in the AFL? I will show you this——

Mr. Agee: Pardon me. Would it not be better to ask him if he did sign a clearance?

Mr. Jennings: All right.

Q. (By Mr. Jennings): Did you sign a clearance in the AFL in 1945? I will show you one of these little clearance slips. Did you get one of those?

A. In 1945 I belonged to the AFL.

Q. When you came to work in 1945, did you get a clearance? A. Sure.

(Testimony of Huston F. Frazier.)

Q. Calling your attention to the 20th of November, 1945, do you recall being told on the morning of that day that you were laid off?

A. Well, I never knew the date, but I know I was told to lay off.

Q. Who told you that?

A. Mr. Hume told me.

Q. Where were you working at the time?

A. In the warehouse. [257]

Q. What did Mr. Hume say?

A. Well, he just said that we was laid off. That was all.

Q. Who was laid off?

A. The whole bunch.

Q. Did he tell you why you were laid off?

A. Because we wouldn't—no, he did not say why.

Q. What did he say?

A. Well, he told us that we was going to have to be temporarily laid off.

Q. Temporarily laid off until when?

A. He did not say.

Q. What did you do after Mr. Hume told you you were temporarily laid off?

A. We just went out on the sidewalk, and in a little bit, why, we went back to work, all that wanted to work.

Q. Pardon me?

A. We just was out on the front of the building there, and stood around there for a while, and Mr.



(Testimony of Huston F. Frazier.)

Granberg come by, and he said, "All you boys that want to go to work, go on back and go to work."

Q. Did you go to work? A. Sure.

Q. Did you sign any clearance in the AFL before you went back to work? A. No. [258]

Q. Did you go to work the next day, the 21st?

A. We went to work the same day we was laid off.

Q. Did you go back the following day to go to work? A. Yes.

Q. Did you succeed in getting inside the plant?

A. We did not succeed in working, no.

Q. Did you gather there in front of Mr. Fordham's office? A. That is right.

Q. Did Mr. Fordham come out and talk to the employees? A. He did.

Q. What did he say?

A. Well, he said to get out and stay out. One of them asked him if that meant we was fired, and he said, "Yes, I mean you are fired."

Q. What did you do then?

A. Went home.

Q. Did you work after that until about the 7th of February of 1946?

A. Not until he called us back, no.

Q. You returned to work on February 7th, 1946?

A. Well, I don't know what date it was. It was about that time, though.

Q. Have you worked since? A. I have.

(Testimony of Huston F. Frazier.)

Q. Since you went back, have you been [259] approached to join the AFL? A. Yes, sir.

Q. By whom.

A. By the representatives.

Q. Was that during working hours?

A. That is right.

Q. Did you join?

A. I did, the last—it was about two weeks ago, I guess. I was told I had to join or not work.

Q. Who told you that?

A. The representative of the AFL.

Trial Examiner Myers: Do you know his name?

The Witness: No, I do not.

Trial Examiner Myers: What does he look like?

The Witness: Yes, I did know his name. It was Evans.

Trial Examiner Myers: Evans?

The Witness: That is correct. I have got the clearance slip in my pocket.

Q. (By Mr. Jennings): You got a new clearance slip this year? A. I did.

Q. Did you pay dues in the AFL in 1945, after June? A. I did not.

Mr. Jennings: That is all.

Trial Examiner Myers: Mr. Agee?

Mr. Agee: No questions. [260]

Trial Examiner Myers: Mr. Tobriner?

Mr. Tobriner: No questions.

Trial Examiner Myers: You are excused, sir.

(Witness excused.)

Thank you very much.

Trial Examiner Myers: Will you call your next witness, please?

Mr. Jennings: I should like to offer this stipulation, Mr. Examiner, that the individuals I shall name, if they were called as witnesses in this proceeding, each of them would testify as follows:

That he is employed——

Mr. Agee: Who are the witnesses?

Mr. Jennings: I have them here. Do you want to look at the names first?

Mr. Agee: Just tell me who they are.

Trial Examiner Myers: Read the names, Mr. Jennings.

Mr. Jennings: They are all regular workers. A. E. Berry; Ernest G. Bishop; Vidor Bjorklund; Harold Dillard; William J. Ely; T. Boyd McKamey; A. E. Moore; Abe Thiessen; R. B. White; and Neal Watts.

That if those individuals were called as witnesses, in this proceeding, Mr. Examiner, each of them would testify that he is a regular worker, and was employed as a regular worker by the G. W. Hume Company in 1945, in most instances, [261] or some time prior thereto; that in August of 1945 each of them did sign a clearance in the AFL and secured a clearance in approximately August, and in the manner testified to by Mr. Heagle.

Mr. Tobriner: Will you stipulate that was 22382 you are referring to?

Mr. Jennings: That is right, a clearance in Local 22382, similar to AFL Exhibit No. 1.

That on November 20, 1945, each of them was told by a company official that they were being laid off temporarily.

All of these would further testify that they gathered in front of Mr. Fordham's office; that they were of 1945, and heard their names read by Mr. Heagle, or saw their names on a list which Mr. Heagle then had; that each of them returned to work at approximately 8:00 o'clock on the morning of November 21st; that they went through the main gate and gathered in front of Mr. Fordham's office; that they were not able to get inside the plant, that Mr. Fordham then told them to get out, that they were fired.

Each of them would further testify that he signed a pledge card for FTA-CIO in either August or September of 1945; that each of them would testify that he did not sign a voluntary check-off, with the exception of Neal Watts, who would testify that he did sign a voluntary check-off and revoked it almost immediately thereafter. [262]

Trial Examiner Myers: Do you stipulate, Mr. Jennings?

Mr. Jennings: So stipulated.

Trial Examiner Myers: Mr. Agee?

Mr. Agee: I will stipulate this: If those witnesses were called, they would testify as Mr. Jennings has stated.

Mr. Edises: I so stipulate.

Mr. Tobriner: I stipulate that if they were called, they would testify as Mr. Jennings stated.

Mr. Edises: Could I ask the Reporter to read back the names of each of those persons?

(The record was read.)

Mr. Tobriner: I will have to ask that the name of A. E. Moore be deleted from that, because it is not on our list.

Mr. Agee: It is on the list attached to the complaint.

Mr. Tobriner: That is right, but it is not on the list that was read out on the November 20th meeting. It is not on the list dated November 20th.

Trial Examiner Myers: Where is Mr. Moore?

Mr. Jennings: He is working.

Trial Examiner Myers: Do you want to call him as a witness?

Mr. Jennings: We can delete Mr. Moore and call him as a witness, Mr. Examiner. His name does not appear on that list, although he told me that—well.

Trial Examiner Myers: All right. [263]

Mr. Tobriner: Mr. Jennings, perhaps you can save yourself some time.

Trial Examiner Myers: All right, delete the name of Mr. Moore.

Mr. Jennings: Is it satisfactory as to the rest, Mr. Tobriner?

Mr. Tobriner: Yes, We just cannot stipulate that you read from the list, when the list itself shows it was not there.

Trial Examiner Myers: All right.

Will you call your next witness, please, Mr. Jennings?

Mr. Jennings: We have the contract, I think, that Mr. St. Sure spoke of yesterday, and I would like to——

Trial Examiner Myers: You mean, 4(b) and 4(c)?

Mr. Jennings: Yes.

Mr. Agee: Mr. Examiner, I have just been informed that this Mr. Moore that we were talking about just now, while he was not on the list, it was stated to the Company by the Union that it was an oversight, and they immediately telephoned the Company, right after sending this list to the Company, and said that Mr. Moore should be included on the list. I am willing to stipulate that that is the fact. It might eliminate the necessity of calling Mr. Moore.

Trial Examiner Myers: Very well.

Do you so stipulate? [264]

Mr. Jennings: I would like to point out to Mr. Tobriner, Mr. Examiner, that Mr. Heagle said there was a longhand list given to him, and Mr. Moore says that his name was read off as one of those. At least, that is what he told me.

Mr. Agee: If it was added orally, I think it would have the same effect.

Mr. Jennings: That is right, yes.

Mr. Agee: I am willing to stipulate, and eliminate the necessity of calling Mr. Moore up from Turlock, where he is now working.

Mr. Tobriner: It is impossible for us to know

what was on the longhand list that was prepared, so if the Company states that, I do not suppose we have any objection.

Mr. Agee: The stipulation I made was that the Company was advised by the Union orally, immediately after delivering this list to the Company, that Mr. Moore had inadvertently been overlooked, and that he should be added to and included in the list. That would be Mr. Birchall's testimony in that respect.

Mr. Tobriner: That would be Mr. Birchall's testimony?

Mr. Agee: That is right.

Mr. Tobriner: I so stipulate.

Mr. Jennings: Then may I add Mr. Moore to the list again, and stipulate that he would testify [265] substantially as the others with the amendment as indicated by Mr. Birchall and Mr. Agee.

Trial Examiner Myers: Do you so stipulate?

Mr. Jennings: I so stipulate.

Trial Examiner Myers: Do you, Mr. Edises?

Mr. Edises: So stipulate.

Trial Examiner Myers: Very well.

Mr. Edises: I do not think Mr. Tobriner's stipulation is on the record.

Mr. Jennings: Mr. Examiner, I should like to ask the reporter to mark as Board's Exhibit 4(b) an amendment to Board's Exhibit 4(a). I will call the Examiner's attention particularly to Item 5 on the first page.

Trial Examiner Myers: Very well, sir.

Is there any objection to that paper going in evidence?

Mr. Agee: No objection.

Trial Examiner Myers: There being no objection, the paper is received in evidence. I will ask the reporter to please mark it as Board's Exhibit 4(b).

(The document referred to was marked Board's Exhibit No. 4(b) and was received in evidence.)

#### BOARD'S EXHIBIT No. 4(b)

The within memorandum of agreement contains the amendments to the collective bargaining contract between California Processors and Growers Inc., and The American Federation of Labor and California State Council of Cannery Unions, as negotiated during 1944 and as ordered by the National War Labor Board in Case No. 111-7430-D. This memorandum shall constitute an interim memorandum modifying the amended contract executed July 10, 1943 (originally adopted June 10, 1941), and the Supplementary Emergency Agreement of the same date in 1943, for the purpose of setting forth the understandings reached by the parties since March 1, 1944, and the subsequent directive orders of the War Labor Board, pending the conclusion of negotiations for the 1945 season, at which time it is contemplated that the basic agreement will be reprinted, with the following modifications included:



Board's Exhibit No. 4(b)—(Continued)

1. The paragraph following the "Witnesseth" clause shall read as follows:

"Each and every, all and singular of the obligations of said collective bargaining agreement dated June 10, 1941, as amended January 26, 1942, and July 10, 1943, are hereby ratified and confirmed, without variation or modification of any kind except as set forth herein, and in the 'Amended Supplementary Emergency Agreement' of even date herewith."

2. The following sentence shall be added to Section 3(a) of the contract:

"The Employer shall submit, at reasonable times, upon the request of the Union, duplicate hire cards or a list of all employees hired since the previous submission, as well as a list of the names of workers who have quit or been discharged."

3. The following words shall be added to paragraph (3) of Section 3(b) of the contract:

". . . when it is possible to do so . . ." following the words "undertakes to have available" and preceding the words "at member plants."

4. Paragraph (5) of Section 3(b) shall read as follows:

"Each local union and each plant shall provide a practical method for receiving notices

Board's Exhibit No. 4(b)—(Continued)  
herein provided, and if notice is given but not  
availed of by the other party, or if no one is  
reasonably available to receive notice, the party  
not in default shall be released from obligation  
under these rules, until the default is cor-  
rected."

5. The following new subsection shall be added  
to Section 3 and numbered 3(c):

"3(c) The Employer will deduct from their  
wages and turn over to the proper officers of  
the union the initiation fees and union dues  
of such members of the union as individually  
and voluntarily certify in writing that they  
authorize such deductions. Such authorization  
shall apply until or unless it is revoked indi-  
vidually and voluntarily, in writing, by such  
union members.

"The Employer and the Union each agree  
that neither of them nor any of their officers  
or members, or employees, will intimidate or  
coerce employees into executing such certifi-  
cates or causing them to be revoked. If any  
disputes arise as to whether there has been  
any violation of this pledge, such disputes shall  
be regarded as a grievance and submitted to  
the grievance procedure established by this  
agreement."

6. Section 4(a) of the contract shall read as  
follows:

Board's Exhibit No. 4(b)—(Continued)

“The following work is covered by this agreement:

“(a) All work performed in Employer's canneries, frozen or frosted food plants and dehydration plants and storehouses, warehouses, labeling rooms, or in sheds or lots adjacent thereto where commodities or materials are processed or stored.”

7. Subsection (2) of Section 5(a) shall read as follows:

“5(a)(2) During any period of the year when perishable products, whether fruits or vegetables, are being processed (including the exempt periods as provided in the Fair Labor Standards Act), not more than eight (8) hours shall constitute a day's work at straight time, and not more than forty-eight (48) hours shall be worked at straight time and without the payment of overtime in any week.”

8. The following sentence shall be added to Section 6(b) of the contract:

“From and after the date hereof, any employee now or hereafter being paid by the week or month, may, by a written notice to his employer, elect to be paid on an hourly basis instead of in accordance with the provisions of this subsection, and upon receipt of such notice, the Employer shall thereafter pay such employee on an hourly basis, rather than in ac-

Board's Exhibit No. 4(b)—(Continued)  
cordance with the provisions of this subsection."

9. Section 7(a) shall read as follows:

"Straight time in any day shall be eight (8) consecutive hours, except for one (1) hour meal period, or an additional meal period if necessary because of the late starting time of the day's work, as provided in subsection (d) of Section 7 hereof, and except for work recesses as provided in Section 5(c) hereof."

10. The provisions following the first paragraph of subsection 7(b) shall read as follows:

"Subject to the provisions of Section 5 hereof, during any portion of the year when perishable products are being processed, overtime shall be paid as follows:

"For all employees:

"For time in excess of forty-eight (48) hours, exclusive of meal periods in any given week—one and one-quarter times the straight time rate.

"For time in excess of sixty (60) hours, exclusive of meal periods, in any given week—one and one-half times the straight time rate.

"For time in excess of eight (8) but not to exceed ten (10) consecutive hours as above defined, in any given day—one and one-quarter times the straight time rate.

"For time in excess of ten (10) consecutive

Board's Exhibit No. 4(b)—(Continued)  
hours as above defined, in a given day—one and one-half times the straight time rate.

“For time in excess of twelve (12) consecutive hours as above defined, in a given day—double the straight time rate.

“Incomputing overtime for workers during any portion of the year, there shall be no duplication or pyramiding of payment for overtime in excess of eight (8) or ten (10) or twelve (12) hours in any given day and in excess of forty-eight (48) or sixty (60) in any given week, as the case may be.”

11. Section 12 of the contract shall read as follows:

“Any employee who has been on the payroll of a company and has worked 1600 or more hours at either straight or overtime during the current period of twelve (12) consecutive months from and after the date or anniversary date of his employment shall receive one week's vacation with pay after the first such year, and two weeks' vacation with pay after five consecutive years of such employment. Vacation pay shall be computed on the basis of the average weekly hours during the eligibility period multiplied by the straight time hourly rate of pay, but in no event less than 40 hours nor more than 48 hours.

“In order to arrive at the ‘average weekly earnings’ of an employee, the ‘eligibility period’

Board's Exhibit No. 4(b)—(Continued)  
shall be considered as 52 weeks (less one or two weeks for previous vacation allowance, as the case may be), and the figure of 52 or 51 or 50 weeks should be divided into the total of straight and overtime hours worked by the employee during the year beginning from the date or anniversary date of his employment or during the calendar year, as the case may be.

“Vacations shall be taken prior to the beginning of the next processing season, or at other times by mutual consent.”

12. The following words shall be added to subsection 15(c) of the contract:

“... and a representative of the Union . . .”  
after the words “of the Employer” and before the words “and a record shall be made,” in the second sentence of said subsection.

13. The provisions of Section 18 relating to the term of the agreement shall be extended to March 1, 1946.

14. Schedule “A,” attached to the contract, shall be amended by adding the following subheading and paragraphs covering “Shift Differential”:

“In any plant where clearly defined shifts are established on a plant-wide basis as hereinafter defined, the first shift starting on or after 6 a.m. in any day shall be considered the first shift for said plant for such day, and the fol-

## Board's Exhibit No. 4(b)—(Continued)

lowing shifts during such day shall be considered second and third shifts, respectively, for the purpose of applying the shift differential payment of 5 cents per hour; provided, however, that where any such clearly defined first shift starts so late in the day that the workers starting said shift are working at straight time in accordance with the provisions of the master contract after 6 p.m. of said day, such workers employed at straight time after 6 p.m. shall be considered to be second shift workers, and entitled to the 5-cent differential from and after 6 p.m.

“‘Clearly defined shifts established on a plant-wide basis’ shall mean where uniform shift starting and ending times per day are scheduled in a given plant on a shift basis for the entire plant, regardless of the number of operations being performed or the number of products being processed, with variations in such uniform shift starting and ending times solely to perform related departmental or group work normally done prior to or at the conclusion of related operations. ‘Clearly defined shifts on a plant-wide basis’ shall not include situations where varying shifts are scheduled in a plant during a given day for unrelated departments or groups of workers or for processing different products.

“In any plant where clearly defined shifts are not established on a plant-wide basis as

Board's Exhibit No. 4(b)—(Continued)  
herein defined, and where varying shifts are scheduled by department or products, any work performed at straight time between 6 a.m. and 6 p.m. during any days shall be considered first shift work, and any work at straight time, in accordance with the provisions of the master-contract, between the following hours of 6 p.m. and 6 a.m. shall be considered second or third shift work for such day, and entitled to the five-cent differential.

“‘Straight time,’ as used herein, shall include ‘base pay’ as provided in the master contract, for work performed on Sundays or holidays.

“The purpose of the formula set forth herein is to define second and third shifts so as to avoid and prevent the creation of intraplant and interplant inequalities within the canning industry.

“In connection with the application of this formula, the following provisions will control the payment of overtime rates:

“If first shift workers work beyond eight hours they shall receive overtime but no differential. If second or third shift workers work beyond 8 hours they shall receive overtime based on their regular rate including the differential.”

15. The following language shall be substituted for the first two paragraphs under the subheading “Piece Work Rates” in Schedule “A”:



Board's Exhibit No. 4(b)—(Continued)

“The guaranteed minimum rate for new piece-workers, during the first two weeks of their employment, shall be 60c an hour, and for all other piece rate employees the minimum rate shall be 70c an hour.

“The following formula shall be followed for computing piece-work earnings and continuing the ‘make-up’:

“(a) The guaranteed hourly minimum of 70c an hour for experienced workers shall be calculated on a converted hour weekly basis.

“(b) All persons engaged in an operation on which piece-work is being paid are to be included in the audit.

“(c) Piece-work rates shall be set so that they may reasonably be expected to yield a return for the average operator of 80c an hour. When average weekly earnings are lower than 80c an hour, a percentage adjustment will be made to all in the department.

“(d) Payroll audit by the Division of Industrial Welfare of the State of California shall be continued.

“(e) All workers earning less than the guaranteed hourly minimum shall be adjusted to the guaranteed hourly minimum on a converted hour weekly basis and the audit of piece-worker earnings shall be made on the workers' earnings so adjusted.

“(f) Any percentage adjustments resulting because of the average earnings of less than

Board's Exhibit No. 4(b)—(Continued)  
80c an hour shall be applied to actual piece-work earnings only. Employers should pay whichever figure is the greater—adjusted earnings or the guaranteed hourly minimum.”

16. The “Supplementary Emergency Agreement” is amended as follows:

“ ‘Emergency victory’ workers shall be exempt from the union 50c weekly fee during the first two weeks of their employment, but then shall be required to pay the fee if they remain employed for longer than two calendar weeks. All new employees shall continue to be required to secure clearance cards from the Union.

“This modification of the 1943 supplementary agreement is limited to a period of ‘grace’ of two calendar weeks during which no 50-cent fees are to be collected from Victory workers. Thereafter, the 50-cent fees shall be paid in accordance with the supplementary agreement.”

17. The following provisions shall govern the effective dates of the changes set forth in this memorandum:

Item 1 became operative as of May 15, 1944 (the concluding date of negotiations), with the understanding that final approval of several 1944 items depended on National War Labor Board final determination.

Item 2 has been operative during 1944, and is reaffirmed as of the date hereof.

Board's Exhibit No. 4(b)—(Continued)

Item 3 became operative as of May 15, 1944.

Item 4 became operative as of May 15, 1944.

Item 5 became effective as of June 4, 1945, following final decision by the National War Labor Board.

Item 6 became operative as of May 15, 1944.

Item 7 is effective retroactively to March 1, 1944, by order of the War Labor Board.

Item 8 is effective as of the date hereof.

Item 9 is effective retroactively to March 1, 1944, by order of the War Labor Board.

Item 10 is effective retroactively to March 1, 1944, by order of the War Labor Board.

Item 11 is effective retroactively to March 1, 1944, by order of the War Labor Board.

Item 12 has been operative during 1944 and is reaffirmed as of the date hereof.

Item 13 has been operative during 1944, was confirmed by letter dated January 4, 1945, and is reaffirmed as of the date hereof.

Item 14 is effective retroactively to March 1, 1944, by order of the War Labor Board.

Item 15 is effective as of June 4, 1945, with retroactive application relative to the minimum rate only to be determined by War Labor Board clarification.

Item 16 is effective as of June 4, 1945, by order of the War Labor Board as modified by the agreement of the parties.

Board's Exhibit No. 4(b)—(Continued)

In Witness Whereof the parties hereto have set their hands and seals this ..... day of June, 1945.

CALIFORNIA PROCESSORS  
AND GROWERS, INC.

By .....

AMERICAN FEDERATION  
OF LABOR.

By .....

CALIFORNIA STATE  
COUNCIL OF  
CANNERY UNIONS.

By .....

Mr. Jennings: Copies of that were not available last night, Mr. Examiner. Mr. Agee has assured me that there will be copies available later. May permission be granted to substitute two copies for this copy which I am offering? [266]

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Trial Examiner Myers: Very well.

Mr. Agee: All right. May I then have that? I will do that immediately.

(Mr. Jennings hands document to counsel.)

Mr. Jennings: As Board's Exhibit 4(c), I offer a document headed "Schedule A, Revised, 10/31/45", which is also an amendment to Board's Exhibit 4(a).

Trial Examiner Myers: Any objection, gentlemen, to the paper going in evidence?

Mr. Edises: No objection.

Mr. Agee: No objection.

Trial Examiner Myers: There being no objection, the paper is received in evidence. I will ask the reporter to please mark it as Board's Exhibit 4(c).

(The document referred to was marked Board's Exhibit No. 4(c) and was received in evidence.)

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BOARD'S EXHIBIT No. 4(c)

Amendment to Master Contract

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Additional Wage Provisions:

1. Regardless of minimum wage rates specified in Schedule "A" hereof, any person employed under and pursuant to the 1942 contract, who was paid a higher scale over and above the minimum bracket rate for his regular or principal classification<sup>6</sup>, shall, while similarly classified, receive an

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<sup>6</sup>"The words 'regular or principal classification' are hereby interpreted to mean the work or combinations of work previously and customarily performed by individual workers. Therefore, the premiums to be maintained are those which previously and customarily were paid individual workers over and above the base bracket rate for any work to which they may have been assigned. These established premiums per hour for such employees above the 1942 bracket base rates shall be maintained in the various classifications to which workers

increase in rate equal to the increase in minimum base rate for his regular or principal classification as between the 1942 and 1943 wage rates. If he is assigned to a lower bracket, as provided in Section 6(f) hereof, he shall retain the same premium per hour over and above the minimum rate for such new bracket assignment, while so assigned, as that theretofore established as the premium per hour over and above his regular or principal bracket classification rate.

2. Effective October 31, 1945, the following increases in wage rates apply:

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may be assigned hereafter during the term of this agreement on the same basis in cents per hour that they existed above the bracket base rate while assigned to each classification of work during 1940.

“It is expressly provided, however, that such premiums per hour may be changed, adjusted, or discontinued hereafter in the event that the character of the normal assignment of such employees is changed by reasons of variations in conditions, production, processes, or methods of work, justifying such change, adjustment, or discontinuance of premiums. Such changes, adjustments or discontinuances or premiums, however, shall be made only after one week's notice in writing is given by the employer to the local union stating the reason therefor; and if the Union objects in writing to such change, adjustment, or discontinuance of premium being made within one week after such notice is given, then the matter shall be subject to appeal in accordance with the provisions of Section 8 of the contract, and the change, adjustment, or discontinuance shall not become effective until or unless it is approved by the Adjustment Board.”  
—Central Adjustment Board Ruling 6/30/41.

All hourly time rate minimum wages stipulated in the contract shall be increased ten cents per hour.

3. Watchmen shall receive the Bracket V rate as a minimum wage, and shall be governed by the same provisions as other workers relating to hours of work, except that they shall receive overtime for the seventh consecutive day, and not Sundays or holidays as such. The provisions of Section 7(d) relating to meal time shall not be construed to require that watchmen are to receive overtime after 5 hours, provided they have time off from their regular duties for meal periods, although remaining on the premises during such periods.

4. Floor ladies who are performing supervisory duties shall receive fifteen (15) cents an hour above the base hourly rate when so employed. This provision shall not apply to inspection work unless the inspector likewise has supervisory duties.

5. The provisions set forth herein shall be effective as of October 31, 1945, as a master contract and shall operate as a direct agreement between individual employers and individual local unions as to named plants and unions upon the execution of certificates in the manner and form as set forth in Section 2 of the collective bargaining agreement of June 10, 1941, and shall continue in full force and effect thereafter in accordance with the provisions of Section 18 of the collective bargaining agreement.

In witness whereof the parties hereto have set

their hands and seals this 19th day of November, 1945.

CALIFORNIA STATE COUNCIL OF  
CANNERY UNIONS

/s/ VERNON L. PANKEY,  
President

/s/ HAL P. ANGUS,  
Secretary-Treasurer

CALIFORNIA PROCESSORS AND GROW-  
ERS, INC.

/s/ EMIL RUTZ,  
President

/s/ J. W. BRISTOW,  
Secretary-Treasurer

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Mr. Jennings: May the same permission, Mr. Examiner, be granted to withdraw 4(c) as was granted for 4(b)?

Trial Examiner Myers: Very well, Mr. Jennings. Permission is granted.

Mr. Jennings: May it be stipulated by all counsel that at all times since August of 1945, representatives of the charging union, the FTA-CIO, have been denied access to the plant of the Respondent cannery at Turlock?

Mr. Agee: I so stipulate. [267]

Mr. Tobriner: What is the date, Mr. Jennings, please?

Mr. Jennings: August of 1945.



Mr. Edises: So stipulated.

Mr. Tobriner: So stipulated.

Trial Examiner Myers: Mr. Jennings.

Mr. Jennings: I so stipulate.

We have this matter of the stipulation with regard to the testimony which Mr. Rearick would give.

Do I understand that you still want Mr. Rearick here to testify, Mr. Tobriner? That was left open last night.

Trial Examiner Myers: Off the record.

(Discussion off the record.)

Trial Examiner Myers: Are you ready gentlemen?

Mr. Agee: Yes.

Mr. Jennings: Ready, Mr. Examiner.

Yesterday, Mr. Examiner, I stated on the record that Mr. Rearick, if called as a witness, would give certain testimony. I understand now that all counsel are agreed that if he were called, he would testify as I have stated.

Mr. Agee: So stipulated.

Mr. Tobriner: So stipulated.

Trial Examiner Myers: Mr. Edises?

Mr. Edises: So stipulated.

Trial Examiner Myers: Do you stipulate?

Mr. Jennings: So stipulated. [268]

Trial Examiner Myers: Thank you.

Mr. Jennings: May it further be stipulated by all counsel that if Clemie Robinson, Monroe Robinson and Thomas R. Broll were called as witnesses

herein, each of them would testify that he secured a clearance from Local 22382 in about August of 1945, and that each of them would testify with respect to the events of November 20th and 21st, 1945, in substantial accordance with the testimony of the other seasonal employees who have been called herein.

Mr. Agee: So stipulated.

Mr. Edises: So stipulated.

Mr. Tobriner: So stipulated.

Mr. Jennings: Each of those individuals are seasonal employees.

Trial Examiner Myers: You will so stipulate?

Mr. Jennings: I will so stipulate, Mr. Examiner.

Mr. Examiner, if I am able to locate Clyde Faddis and Harry E. Pierson, I would expect to put them on the stand. If not, I may ask for a stipulation with respect to what they would testify.

With respect to John M. Smith, a seasonal worker named in the charges, not as present in this vicinity, I will try to secure a stipulation. If I cannot, he is not available to testify.

Mr. Agee: May I say this, that we feel that as far as [269] we can go is to stipulate as to witnesses that are available and could be produced and called, and that we feel that that is as far as we can go. If a witness is not available, we do not feel that we want to stipulate to that.

Trial Examiner Myers: Very well.

Mr. Jennings: That is all I have at this time, Mr. Examiner.

I should like, if I may, to reserve leave to re-open

my case, if I am able to secure the attendance of any of those individuals, the three I have named.

Trial Examiner Myers: Very well, sir.

Mr. Agee: May I proceed?

Trial Examiner Myers: Yes.

Mr. Agee: Mr. Birchall, will you step up?

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THOMAS D. BIRCHALL

a witness called by and on behalf of the Respondents, G. W. Hume Company and California Processors & Growers, Inc., being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name, sir?

The Witness: Thomas D. Birchall.

Trial Examiner Myers: Where do you live, sir?

The Witness: Pardon?

Trial Examiner Myers: Where do you live?

The Witness: 1018 Franquette Avenue, San Jose. [270]

Trial Examiner Myers: You may be seated, sir.

You may proceed, Mr. Agee.

Q. (By Mr. Agee): By whom are you employed, Mr. Birchall?

A. The G. W. Hume Company.

Q. In what capacity?

A. General Manager.

Q. In connection with this controversy between the AFL Union and the charging CIO Union, did you make up in your own handwriting a statement

(Testimony of Thomas D. Birchall.)

of facts and events concerning this matter, which occurred in the year 1945?

A. Yes, I did.

Q. When did you make up such a statement?

A. Progressively as the events occurred.

Q. Did you make that up in your own handwriting?

A. Yes, I did.

Q. In this statement were the notations that you made there made at or immediately following the occurrence of the events themselves?

A. Yes, following the events.

Q. Is it necessary for you in your testimony from time to time to refer to that statement in order to refresh your recollection?

A. Yes, I would like to.

Q. Commencing generally with this situation, Mr. Birchall, and calling your attention to the year of 1940, [271] did the Hume Company have contracts for the years 1940 to 1944, inclusive, with the Cannery Workers Union, Local 22382?

A. Yes, they did.

Q. In so far as the Company's dealings with employees is concerned, is that the only organization with which the Company had agreements?

A. That is the only organization.

Q. You are familiar with the contract that covered the period from March 1, 1945 up to March 1 of this year, are you.

A. Yes.

Q. When to your knowledge, was the first time that there was any attempt made by the FTA Union

(Testimony of Thomas D. Birchall.)

involved in this matter to organize or obtain members for that organization among the employees of the Hume Company?

A. It came to my attention in the fall of 1945.

Q. Will you state what happened in substance at that time, in connection with that matter?

Mr. Agee: By the way, I think counsel would like to see that before you refer to it.

Trial Examiner Myers: We will take a short recess while counsel is examining the statements.

(Whereupon a short recess was taken, after which proceedings were resumed as [272] follows:)

Mr. Jennings: Mr. Examiner, before we convene I would like to state for the record that Mrs. Clemie Robinson and Mr. Monroe Robinson are here in the court room. We have stipulated about their testimony, and I understand no counsel desires to examine them further. That being the case, I think they should be free to go.

Trial Examiner Myers: Is that correct, gentlemen? Does anybody want to examine them?

Mr. Agee: That is correct.

Mr. Tobriner: No, I have no desire to examine them.

Trial Examiner Myers: They are excused.

Mr. Jennings: Thank you very much.

Q. (By Mr. Agee): Mr. Birchall, referring to the statement in which you said you recorded the

(Testimony of Thomas D. Birchall.)

events chronologically, will you refer to that statement and give us the date of the first notation?

A. It is concerning the revocation notices, and it is of September 8th to 13th.

Mr. Edises: Mr. Examiner, I simply want to state, as far as we are concerned, if counsel wishes to permit the witness to make a narrative statement, we have no objection.

Mr. Agee: I would be glad to do that. It will save a lot of time.

Mr. Jennings: It is quite all right with the Board, or you can offer it. [273]

Mr. Tobriner: No objection.

Trial Examiner Myers: Very well, sir.

Q. (By Mr. Agee): Will you take your statement and give the account of the matters referred to therein in narrative form? Just go right along. Start at the beginning, and go right through.

A. I could read the statement.

Q. That is satisfactory, if you will read the statement then, but read it slowly and distinctly, so if counsel wish to interrupt at any time, they may.

Are there any matters of argument in there, that is, your personal opinions or conclusions, or arguments of any kind? We will have to eliminate those. If you come to any such portion, will you eliminate it, please?

Mr. Edises: I looked at it. I think it is fairly factual.

Q. (By Mr. Agee): All right. Go right ahead.

A. In order that the present situation of the

(Testimony of Thomas D. Birchall.)

G. W. Hume Company be clearly understood, it is necessary that the entire background of the employee-employer relationship from the time the Union entered the picture until the present be set forth.

In the fall of 1940, the workers at the Hume plant were organized into a group which became part of "Cannery Workers Union Local 22382", an independent American of Federation of [274] Labor Union. Contracts with this group have governed the company's dealings with the employees from that time to the present. The present existing contract has been approved by the NLRB to be valid until March 1, 1946.

Mr. Edises: That, I think, probably, is one of those legal conclusions that should not probably be in the record.

Mr. Agee: We will stipulate that that is a legal conclusion of the witness.

A. (Continuing): During the 1945 operating season, unrest among the workers became apparent. Employees signed AFL pledge cards and dues deduction authorizations, but a good many immediately revoked their dues deduction authorizations. The confusion and unrest steadily mounted during the 1945 peach operations.

During this period of unrest, the Food, Tobacco, Agricultural and Allied Workers Union, CIO, commenced proselyting members in the group. Shortly thereafter they were successful in obtaining an

(Testimony of Thomas D. Birchall.)

industry-wide election. The statistics of this election show——

Mr. Jennings: I think this is argument, Mr. Examiner, coming up.

The Witness: May I read it, and——

Mr. Agee: I think that is right. I think you should eliminate that.

The Witness: All right. [275]

Mr. Agee: In other words, understand, Mr. Birchall, that what we are trying to do is to let you testify in narrative form, but when it comes to a question of argument or opinion, you are not entitled to give that.

The Witness: That is right. You warn me when I approach those points will you?

Trial Examiner Myers: Just give us the facts.

Q. (By Mr. Agee): Why do you not refer to your chronological statement? You have nothing but facts set forth there.

A. All right. I will commence by telling that the revocation notices referred to previously were turned in on or about August 8th to 13th, and they were received and honored by the Company.

Trial Examiner Myers: How many were turned in?

The Witness: I think in the neighborhood of 150.

Trial Examiner Myers: How many employees did you have at the time?

The Witness: 400, approximately.

Trial Examiner Myers: Were those seasonal and——



(Testimony of Thomas D. Birchall.)

The Witness: Seasonal and regular workers.

Trial Examiner Myers: All right.

A. (Continuing): At this time the Union representatives Brown and Bowman made an effort to persuade the workers to cancel these revocation notices, and their efforts were unsuccessful. No dues were collected after the revocation [276] notices had been received.

Trial Examiner Myers: You mean, no dues from those who signed the revocation?

The Witness: That is correct.

A. (Continuing): At the commencement of the fall pack, the Union, according to its customary practice, signed up approximately 123 workers out of a total of 175 employed.

Mr. Edises: That is the AFL Union?

The Witness: The AFL Union.

A. (Continuing): At the time that the fall pack was commenced, the company was instructed to lay off or fail to employ all those who would not clear, and this request was not granted.

Q. Who made the request?

A. The Union, represented by Mr. Brown and Mr. Evans.

Q. AFL? A. AFL.

Q. They requested that certain employees be laid off?

A. It was a blanket request. All employees that did not clear with the union.

Q. They made a request that all employees who did not clear with the AFL Union be laid off?

A. That is correct.

(Testimony of Thomas D. Birchall.)

Q. You say the Company did not comply with that request?           A. That is correct.

Trial Examiner Myers: When was the request made?

The Witness: That was at the commencement of the fall spinach pack. I do not know the exact date.

Mr. Agee: Approximate.

The Witness: The approximate date would be——

Trial Examiner Myers: In what month was it?

The Witness: It was in the month of November; about the 10th.

Trial Examiner Myers: About the 10th?

The Witness: About the 10th.

A. (Continuing): During the week of November 17th, 1945, the Company was advised by the Union representatives Torreano, Brown, King and Evans, to discharge one Clifford Luther for pursuing anti-AFL activities on the Company's time. This charge was investigated and found to be untrue, and the man was not discharged.

Trial Examiner Myers: Who made the investigation? Did the Company make the investigation?

The Witness: I made the investigation.

Trial Examiner Myers: All right.

A. (Continuing): Operations proceeded smoothly through November 19th. Between 9:00 and 10:00 P.M. on Monday, the Teamsters Union refused to allow the E. J. Swanson Co. to deliver the

(Testimony of Thomas D. Birchall.)

spinach. Swanson & Co. are the independent truck line who were at that time hauling spinach for the company. [278]

Q. Give me the date and the time again.

A. The date would be November 19th. The time is approximately between 9:00 and 10:00 o'clock in the evening, P.M.

Q. You say the "Teamsters Union", which is AFL? Correct?           A. Correct.

Q. Did what in connection with this truck?

A. They prevented the truck from being delivered, the truck load of spinach from being delivered at the plant.

Mr. Tobriner: You are not now referring to 22382?

The Witness: I am referring to the Union that controls the truckers' operations, whatever that may be called.

Mr. Agee: Go ahead.

Trial Examiner Myers: Swanson was supposed to deliver certain spinach to Hume and Company?

The Witness: That is correct. They are a truck company.

A. (Continuing): Mr. Hume, R. G. Hume, arrived at the plant at 11:00 o'clock that evening, and was informed by Torreano and Evans that the spinach deliveries would be stopped until certain employees were discharged.

Q. Were those employees named?

A. They were not named at that time.

(Testimony of Thomas D. Birchall.)

Q. Were they described in any way?

A. Not at that time.

Q. All right. [279]

A. On Tuesday morning, November 20th, the plant was prepared for work, as usual. However, no spinach was delivered. An AFL picket line was established, and the Union demands were made in the form of a letter, which is now in evidence in these proceedings.

Mr. Agee: Just a second.

Is that letter in evidence?

Mr. Jennings: Board's Exhibit 9.

Mr. Agee: I see.

All right. Go ahead, then.

A. (Continuing): The contents of this letter was telephoned to Mr. Hume prior to the actual receipt of the letter. After due deliberation, the management agreed to accede to the Union demands. The workers were assembled, and the Union demands made known to them. The list of men whose discharges the Union sought was read, and the workers were informed that these men were laid off. By the time these events had taken place, it was approximately 10:00 o'clock in the morning, and at that time it was impractical to operate for the balance of the day, so operations were suspended until the commencement of Wednesday, the 21st.

On Wednesday morning—

Trial Examiner Myers: What were the men told?

The Witness: Pardon?

(Testimony of Thomas D. Birchall.)

Trial Examiner Myers: What were the men told?

The Witness: They were told they were laid off.

Trial Examiner Myers: Was any reason given to the men for being laid off?

The Witness: The letter was read to them, and they were informed that they should be laid off until this matter "could be straightened out", I think are the exact words that were used.

Trial Examiner Myers: Who made the statement?

The Witness: Mr. Hume made that statement, R. G. Hume, and at that time Mr. Heagle confronted Mr. Hume with the request that he would guarantee that these workers would be returned to the jobs, whereupon Mr. Hume retracted his statement that they were temporarily laid off, and substituted the statement that they were laid off. Period.

A. (Continuing): On Wednesday morning, a book check was established by the AFL representatives at the Hume plant, and while this book check was in progress and during the operation of the cannery, while the cannery was in operation that morning, a group of men, presumably those who had been discharged, and others, forced entrance into the plant without permission. They were physically stopped at the entrance to the preparation room by the AFL Union representatives. At this time a scuffle ensued, and unfortunately at this particular moment no company representative was present.

(Testimony of Thomas D. Birchall.)

The watchman was immediately summoned. He restored order, and the Plant Superintendent was sent for. Mr. Fordham [281] appeared on the scene.

Mr. Edises: Just a moment. I think that portion about their being physically stopped had probably better be stricken. In view of the subsequent testimony that no company representative was present, it would obviously have to be hearsay.

Q. (By Mr. Agee): Did you see or observe the picket line in operation and action that morning of November 21st?

A. I was not at the spot when this occurred.

Q. You were not?

A. I was not there.

Mr. Agee: I see. Then we consent that that go out.

Q. (By Mr. Agee): You say that Fordham was called by the watchman?

A. That is right.

Q. Then what transpired?

A. Fordham appeared and it is my understanding that he informed the gathered people that they were trespassing.

Mr. Jennings: This again would be hearsay.

The Witness: Yes, it is all hearsay.

Mr. Agee: You have called Mr. Fordham to come here, have you not?

The Witness: That is right.

Mr. Agee: All right.

Q. (By Mr. Agee): Eliminate what you your-

(Testimony of Thomas D. Birchall.)

self did not hear. What did you see or hear, if anything, that morning, yourself?

A. Unfortunately, I was in another portion of the plant when this event took place, and as I arrived there, the workers were at that moment walking out of the plant, so all that I can testify here concerning this event is hearsay.

Q. At the time that you saw the workers walking away after the event had occurred, about what time of the morning was it?

A. I guess approximately 10:00; around 10:00.

Q. All right. Now go ahead with your next event.

Trial Examiner Myers: How many employees did you have in the plant at that time?

The witness: I am afraid I could not accurately answer that.

Trial Examiner Myers: About how many.

The Witness: Oh, I would guess there were a hundred people present, other than this group.

Trial Examiner Myers: No, I do not mean present. I mean, how many in the plant?

The Witness: In the plant? About 100.

Trial Examiner Myers: And how many in the group, about 30?

The Witness: About 40.

Trial Examiner Myers: Then you had about 140 employees that were there at that time?

The Witness: That is right. [283]

Q. (By Mr. Agee): Would you go to the next event that you have listed?

(Testimony of Thomas D. Birchall.)

A. I think that covers the complete story of the actual events that occurred.

Q. The Union that the company had the contract with has been referred to, and we will refer to it as No. 22382, is that correct?

A. That is correct.

Q. For the purpose of our questions, when we say "AFL Union," unless we designate it otherwise, you can understand it would mean this 22382. Do you understand that?

A. I understand that.

Q. Did the AFL Union from time to time request the discharge of any of the employees?

A. Yes, they did.

Q. By whom were those requests made, that is, by what individual?

A. Mr. Torreano made one request of me personally, that I can testify to.

Q. Were any of those requests, to your knowledge, ever made in writing?

A. With the exception of the 25 or 26 names on the letter which is in evidence there, I don't know of any requests that were made in writing.

Q. In connection with these oral requests coming from the Union, upon what ground were they made?

A. The ground was not explained to me.

Q. Following such request, what action, if any, did the Company take?

A. They consistently opposed such demand at this particular time.



(Testimony of Thomas D. Birchall.)

Q. Were there any occasions when demands were made that an employee be discharged because he was not in good standing with this AFL Union?

A. Other than this particular event? Yes.

Q. You referred to one specific instance. His name was what?

A. Maraquias—excuse me. I will have to look that one up.

Mr. Tobriner: Mr. Agee, may I ask you what time you are referring to in these questions?

Mr. Agee: I will ask him to fix the time on this one.

A. (Continuing) It is my understanding that Maraquias Pereze was discharged July 15, 1944, at the request of the Union, for failure to join the Union. He worked from June 29, 1944; 14 days.

Trial Examiner Myers: That took place in 1944?

The Witness: '44, that is right.

Q. (By Mr. Agee): Do you have in mind the names of any employees involved in a similar request?

A. That is the only specific name I have.

Q. Were there other instances in which a request was made for the Company to discharge an employee?

A. I understand that it was the general practice.

Mr. Edises: I ask that that go out.

Trial Examiner Myers: Strike it out.

Read the question to the witness, please.

(The question was read.)

(Testimony of Thomas D. Birchall.)

A. All that I can testify to that is hearsay, yes.

Mr. Edises: I ask that go out.

Trial Examiner Myers: Strike it out.

Mr. Jennings: Strike out the "yes." The first part of the answer should remain, should it not, Mr. Examiner?

Trial Examiner Myers: Read the question to the witness, please.

(The question was read.)

A. There were, but I have no personal connection with them.

Trial Examiner Myers: Just answer the question.

The Witness: All right.

A. Yes.

Q. Do you know of any of those instances of your own knowledge, or is your knowledge based on hearsay?

A. My knowledge is based on hearsay.

Q. I will ask you if the AFL Union served a demand or made a demand upon the Company that the Company enter into a contract with it for the year commencing March 1, 1946? [286]

A. Yes, they did.

Q. I call your attention to the commencement of this demand, which recites that the Board's order reads as follows:

(Testimony of Thomas D. Birchall.)

“It is hereby ordered that the elections held from October 11 to December 20, 1945, inclusive, among the employees of members of C. P. & G., and among the employees of the independent companies, be and they are hereby vacated and set aside.”

Then in the language of the demand:

“As a result of this order we now are, as we always have been, the exclusive bargaining agent for your employees. The Board by its own order admits that the recent elections were illegal and now stand voided. The American Federation of Labor cannot accept a position that gives us less than we had prior to the illegal elections. We demand a contract on behalf of our organization that continues to give us exclusive bargaining rights and that affords us a Union shop. We further demand that all increases shall be retroactive to March 1, 1946.”

Is that the language in which the Union made the demand upon the Company?

A. This demand was made to the California Processors and Growers, of which the Company is a member, yes.

Q. Following that demand, what action, if any, did the Hume Company take in response?

A. We resisted this demand until, at the com-

(Testimony of Thomas D. Birchall.)

mencement of our 1946 spring spinach operations, the AFL Union again tied up our trucking operations.

Q. You are familiar with that part of the contract between the Hume Company and the Union for the year commencing March 1, 1945, and ending March 1, 1946, which provides for an arbitration in the event any disputes arise between the Company and the Union?

A. What are the dates of that contract?

Q. For the contract covering the period from March 1, 1945, up to March 1, 1946.

A. Yes.

Q. Following this demand, did the Company enter into a stipulation with the Union to arbitrate the dispute that arose by virtue of this demand made by the Union upon the company?

A. Yes.

Q. I hand you a document dated February 8, 1946, entitled "Stipulation to Arbitrate," and ask if that was the written stipulation entered into on or about the date it bears?

A. To the best of my knowledge, yes.

Q. That recites, does, that, "It is hereby agreed by the parties——"

Mr. Agee: First I will offer this in evidence, and then I will read it.

Trial Examiner Myers: Any objection?

Mr. Edises: No objection.

Mr. Tobriner: No objection.

(Testimony of Thomas D. Birchall.)

Trial Examiner Myers: It will be received in evidence, and I will ask the reporter to mark it as Hume's Exhibit No. 1.

(The document referred to was marked Hume's Exhibit No. 1, and was received in evidence.)

## HUME COMPANY EXHIBIT No. 1

February 8, 1946

### STIPULATION TO ARBITRATE

It is hereby agreed by the parties listed below that the issues described below shall be heard by an arbitrator to be named by the Director of the U. S. Conciliation Service, Department of Labor, said arbitrator to be a member of the permanent staff of the U. S. Conciliation Service.

The issues to be determined are as follows:

Whether the G. W. Hume Co., a member of California Processors and Growers, Inc., in accordance with the terms of the collective bargaining agreement between California Processors and Growers, Inc., and California State Council of Cannery Unions, and/or the agreement between G. W. Hume Co. and Local Union 22382, and/or the past practices of the union and the plant management, is required to maintain a union shop.

(Testimony of Thomas D. Birchall.)

The decision of the arbitrator shall be final and binding upon the parties. No price issue is involved.

CALIFORNIA PROCESSORS  
AND GROWERS, INC.,

Representing G. W. Hume  
Company.

By J. W. BRISTOW,  
(Written Signature).

JOHN W. BRISTOW,  
(Typed Signature).

Address: 1200 Financial Cen-  
ter Building, Oakland 12,  
California.

CALIFORNIA STATE COUN-  
CIL OF CANNERY UNIONS,

Representing Local Union  
22382.

By HAL P. ANGUS,  
(Written Signature).

HAL P. ANGUS,  
(Typed Signature).

And By VERNON L. PANKEY,  
(Written Signature).

VERNON L. PANKEY,  
(Typed Signature).

Union Address:  
414 Thirteenth Street  
Oakland 12, California

(Testimony of Thomas D. Birchall.)

Mr. Agee: I will read that into the record.

“It is hereby agreed by the parties listed below that the issues described below shall be heard by an Arbitrator to be named by the Director of the U. S. Conciliation Service, Department of Labor, said Arbitrator to be a member of the permanent staff of the U. S. Conciliation Service.

“The issues to be determined are as follows:

“Whether the G. W. Hume Co., a member of California Processors and Growers, Inc., in accordance with the terms of the collective bargaining agreement between California Processors and Growers, Inc., and California State Council of Cannery Unions, and/or the agreement between G. W. Hume Co. and Local Union 22382, and/or the past practices of the Union and the plant management, is required to maintain a union shop.

“The decision of the Arbitrator shall be final and binding upon the parties. No price issue is involved.

“CALIFORNIA PROCESSORS  
AND GROWERS, INC.,

“Representing G. W. Hume  
Company.

“CALIFORNIA STATE COUN-  
CIL OF CANNERY UNIONS,

“Representing Local Union  
22382.”

(Testimony of Thomas D. Birchall.)

Q. (By Mr. Agee): Following that, was the matter referred to the Central Adjustment Board for arbitration? A. Yes.

Q. I hand you a document entitled "Minutes of Special Meeting of Central Adjustment Board held at 1200 Financial Center Building, Oakland, on Friday, February 8, 1946, at 1:30 p.m.," and ask you if that is the report that was communicated to the Hume Company by the Central Adjustment Board? A. Yes.

Mr. Agee: We offer that as Hume No. 2.

Mr. Jennings: No objection.

Mr. Edises: No objection.

Mr. Tobriner: No objection.

Trial Examiner Myers: There being no objection, the paper is received in evidence, and I will ask the Reporter to please mark it as Hume Exhibit No. 2.

(The document referred to was marked Hume's Exhibit No. 2 and was received in evidence.)

## HUME COMPANY EXHIBIT No. 2

Minutes of Special Meeting of Central Adjustment Board Held at 1200 Financial Center Building, Oakland, on Friday, February 8, 1946, at 1:30 p.m.

Present: Ted Lopez, Harry Rizzo, Mike Elorduy,



(Testimony of Thomas D. Birchall.)

Rose Sanders, Vern Pankey, Sam Kai Kee, A. W. Ford, Ralph Wanzer, A. L. Walters, J. W. Bristow.

In attendance: Mary Jenkins, Bob Irwin, Joe Ferriera, George Mock, Wesley King, H. C. Torreano, Hal P. Angus, T. P. Hedt, F. S. Clough, J. P. St. Sure.

The reading of the minutes of the last Central Adjustment Board meeting was dispensed with.

Chairman Pankey presented the complaint involving the G. W. Hume Co. dated February 4, 1946, as follows:

Nature of Complaint:

“The G. W. Hume Company has mailed letters to approximately twenty-five ex-members of Local Union #22382 who were not in good standing.

“The letters mentioned above advise and request that these ex-members return to work at the Hume plant on Thursday, February 7, 1946.”

Mr. St. Sure described the various discussions held in the recent past concerning the application of Section 3(a) of the agreement, stating that these discussions have resulted in no common agreement between union and employers representatives concerning the interpretation of Section 3(a) of the contract.

(Testimony of Thomas D. Birchall.)

Mr. St. Sure described the question at issue in this case as follows:

“Whether the G. W. Hume Co., a member of California Processors and Growers, Inc., in accordance with the terms of the collective bargaining agreement between California Processors and Growers, Inc., and California State Council of Cannery Unions, and/or the agreement between G. W. Hume Co. and Local Union 22382, and/or the past practices of the union and the plant management, is required to maintain a union shop.”

It was moved by Mr. Elorduy, seconded by Mr. Rizzo, that the G. W. Hume Company be required to maintain a union shop in accordance with the above considerations which comprise the issue.

The following were designated as voting members: Ted Lopez, Harry Rizzo, Mike Elorduy, Rose Sanders, A. W. Ford, Ralph Wanzer, A. I. Walters, Sam Kai Kee.

A secret ballot resulted in a four to four vote; whereupon the Board ordered the case transmitted to an arbitrator for decision.

Following discussion upon the choice of an arbitrator, it was mutually agreed by all parties that the U. S. Conciliation Service would be requested to appoint a permanent staff member of that Service as arbitrator and the secretaries of California

(Testimony of Thomas D. Birchall.)

State Council of Cannery Unions and of California Processors and Growers, Inc., were directed to prepare and transmit the Stipulation to Arbitrate.

There being no further matters before this meeting, it was adjourned at 2:00 p.m.

/s/ J. W. BRISTOW,  
Secretary.

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Q. (By Mr. Agee): I call your attention to the findings of the Board to the effect that: [290]

“A secret ballot resulted in a four to four vote; whereupon the Board ordered the case transmitted to an Arbitrator for decision.

“Following discussion upon the choice of an Arbitrator, it was mutually agreed by all parties that the U. S. Conciliation Service would be requested to appoint a permanent staff member of that Service as Arbitrator and the secretaries of California State Council of Cannery Unions and of California Processors and Growers, Inc., were directed to prepare and transmit the Stipulation to Arbitrate.”

That appeared in the report made to the Company? A. That is right.

Mr. Agee: I have my exhibits backwards, Mr. Examiner.

(Testimony of Thomas D. Birchall.)

Q. (By Mr. Agee): This meeting of the Adjustment Board was No. 1, was it not, and that was immediately succeeded by the stipulation to refer the matter to the Labor Department, is that right?

A. That is right.

Q. Following that, did your representative, in connection with this matter, receive this letter which is dated April 3, 1946, from the United States Department of Labor, United States Conciliation Service?

A. Yes.

Q. Signed by Mr. George Cheney?

A. Yes.

Mr. Agee: We offer this as Hume No. 3.

Trial Examiner Myers: Any objection?

Mr. Edises: No objection.

Mr. Jennings: No objection.

Mr. Tobriner: No objection.

Trial Examiner Myers: There being no objection, the paper is received in evidence, and I will ask the reporter to please mark it as Hume's Exhibit 3.

(The document referred to was marked Hume's Exhibit No. 3, and was received in evidence.)

(Testimony of Thomas D. Birchall.)

HUME COMPANY EXHIBIT No. 3

U. S. Department of Labor, United States Conciliation Service, 1755 Federal Building, Los Angeles 12, California.

April 3, 1946

Paul St. Sure, Attorney  
Financial Center Building  
Oakland, California

Dear Mr. St. Sure:

Re: California Processors &  
Growers, Inc., Arbitration  
(Representing G. W. Hume Company)

Confirming the information given you several weeks ago over long distance telephone from Washington, D. C., respecting the above-entitled matter, I desire to respectfully decline the appointment as Arbiter of this controversy and consequently tender my resignation. The Director of our Service in Washington has been advised of my inability to serve.

Very sincerely yours,

/s/ GEO. CHENEY,  
Arbiter.

cc: Mr. Saul Wallen

---

Mr. Agee: I will read that for the record.

(Testimony of Thomas D. Birchall.)

“Paul St. Sure, Attorney  
Financial Center Building  
Oakland, California

“Dear Mr. St. Sure:

Re: California Processors and  
Growers, Inc., Arbitration.”

Mr. Jennings: Mr. Examiner, the letter is in the record. I do not think it is necessary to read it.

Mr. Agee: I thought maybe the Examiner might want to know what occurred, in order to follow the testimony.

Trial Examiner Myers: I read all the exhibits. If you want to read it, go ahead.

Mr. Agee: It is very short.

“Confirming the information given you several weeks ago over long distance telephone from Washington, D. C., respecting the above-entitled matter, I desire to respectfully decline the appointment as Arbiter of this controversy and consequently tender my resignation. The Director of our Service in Washington has been advised of my inability to serve.

“Very sincerely yours.”

Could we have a recess at this time, and adjourn for lunch?

Trial Examiner Myers: Very well. How long should we take for lunch today?

Mr. Tobriner: One hour, I suggest, so we may be able to finish it up as early as possible.

(Testimony of Thomas D. Birchall.)

Mr. Agee: That is perfectly satisfactory.

Trial Examiner Myers: Very well. We will adjourn now until 1:45.

(Thereupon, a recess was taken until 1:45 o'clock p.m.) [293]

### After Recess

(Whereupon the hearing was resumed, pursuant to the recess, at 1:45 o'clock p.m.)

Trial Examiner Myers: Are you ready, gentlemen?

Mr. Tobriner: Ready.

Mr. Agee: We are ready.

Trial Examiner Myers: Very well.

### THOMAS D. BIRCHALL

a witness called by and on behalf of the Respondents, G. W. Hume Company and California Processors & Growers, Inc., having been previously duly sworn, was examined and testified further as follows:

### Direct Examination

(Resumed)

By Mr. Agee:

Q. Mr. Birchall, you testified that the company continued operations during the fall of 1945 without acceding to the demands of the union that all employees who were not members of the union in good standing should be discharged, is that correct?

A. At first, yes, we did.

(Testimony of Thomas D. Birchall.)

Q. Then you came down to the events of November 20th and November 21st, is that correct?

A. That is correct.

Q. After November 21, 1945, did the company continue in operation? A. Yes.

Q. What were they processing?

A. Spinach.

Q. About when did the spinach season end?

A. The date I think was the 5th of January, 1946.

Q. Under what conditions did the company operate between November 21, 1945, and approximately January 15, 1946, when the spinach season ended?

A. Well, there were no disturbances of any kind.

Q. Was the entire spinach crop processed, that is, that came into the plant?

A. The entire crop was handled, yes.

Q. After the stoppage of the truck that you referred to, on November 20th, were there any further stoppages of work, or anything of the kind?

A. No further stoppages. Everything was smooth.

Q. Are you familiar with a publication known as the "FTA-CIO Cannery Workers"?

A. I have seen copies.

Q. Do you have in mind a statement that was published in that publication on or about November 3, 1945, with reference to the payment of dues to the AFL union by members of the CIO?



(Testimony of Thomas D. Birchall.)

A. Yes, sir. I recall such a statement.

Mr. Edises: Objected to as immaterial.

Trial Examiner Myers: Overruled.

A. Yes, I recall such a statement.

Q. Do you have that article?

A. Yes, I have.

Q. Will you find it, please?

A. Yes. I have this publication in my hands now.

Q. Will you state the date of the publication first? A. It is dated November 3, 1945.

Q. Will you point to the item that I mentioned?

A. (Indicating).

Q. You are pointing to the third column on the first page of this publication, is that correct?

A. That is correct.

Q. Did the company cause this statement made in this publication to be called to the attention of the employees?

A. It was called to the attention of the employees.

Q. I call your particular attention to this part of the article. In the first place, the headline above the article recites: "FTA Locals Stopping AFL Checkoff—Pay Dues to CIO."

Is that correct? A. That is correct.

Q. In the body of this article appears what purports to be a statement from the CIO in quotes:

"However, in cases where workers still find it necessary to pay AFL dues, the FTA will give full credit for dues paid to the AFL." [296]

(Testimony of Thomas D. Birchall.)

Was that part of the statement called to the attention of the employees of the cannery?

A. It was.

Q. Was an effort made by the company to induce the employees, regardless of their personal desires for affiliation, to nevertheless, in order to carry the operation, comply with the AFL demands and pay dues to the AFL? A. Yes.

Q. In connection with the work there at the plant, after the spinach was finished on or about January 15, 1946, were there any plant operations, that is, operations of the whole plant until on or about February 7th?

A. No, no canning operations.

Q. Were canning operations commenced on or about February 7th?

A. No. Canning operations were commenced March 25, 1946.

Q. Then was there any interference or stoppage with whatever work was going on at the plant between February 7, 1946, and March 25, 1946?

A. No, there was no interference.

Mr. Edises: I move to strike the entire line of testimony in regard to stoppages, on the ground that the question of the employer's motives for acquiescing or engaging in a violation of the National Labor Relations Act are immaterial, and particularly in that the employers' notion that it may be subjected to some form of economic duress has been repudiated by both the Board and the courts as an excuse for violating the National Labor Relations Act.

(Testimony of Thomas D. Birchall.)

Trial Examiner Myers: I will deny the motion.

Mr. Edises: I move to strike the testimony dealing with the contents of any paper published by FTA, on the ground that nothing which might have been said by the FTA on that subject could possibly exonerate the company or exculpate in any way their violations of the Act.

Trial Examiner Myers: I will deny the motion. You should have objected to the questions.

Mr. Edises: I had an objection in to that question, your Honor.

Trial Examiner Myers: The only question you objected to was when he was asked, "Have you got in mind a certain publication?"

Mr. Edises: Perhaps technically you may be right, but I think that your Honor's ruling at that time indicated a desire to permit exploration of that subject matter.

Trial Examiner Myers: I will deny the motion.

Q. (By Mr. Agee): Mr. Birchall, is the company equipped to handle its own trucking?

A. No.

Q. You rely entirely on outside truckers, do you? A. Yes. [298]

Q. At the time that you mentioned, when this truck was stopped, was any statement made to the company at that time by the AFL that if these incoming truckloads being hauled to your plant were diverted to other plants, that it would be declared "hot cargo"?

(Testimony of Thomas D. Birchall.)

A. That is right. Such a statement was made.

Trial Examiner Myers: By whom?

The Witness: The statement was made by Mr. Torreano of the AFL.

Mr. Agee: I have no further questions.

Trial Examiner Myers: Have you any questions?

Mr. Tobriner: I have no questions.

Trial Examiner Myers: Mr. Jennings, have you any questions?

#### Cross-Examination

By Mr. Jennings:

Q. You referred in your testimony, Mr. Birchall, to a book check conducted by the AFL.

A. That is right.

Q. What is a book check? What do you mean by that?

A. My understanding of the procedure was this, that the union would establish a point near or at the gate to the entrance to the plant through which all employees must clear before being permitted to go to their jobs within the plant.

Q. That is what you mean by a "book check"?

A. That is what I meant by a "book check." The common practice in the past years.

Trial Examiner Myers: Did they have to exhibit to the representative of the union their dues book?

The Witness: That is right.

Mr. Jennings: Have you Board's Exhibit 4(b), Mr. Agee?

(Testimony of Thomas D. Birchall.)

Mr. Agee: Yes. (Handing document to counsel.)

Q. (By Mr. Jennings): I will show you Board's Exhibit 4(b), Mr. Birchall, and in particular Item No. 5 at the bottom of the first page and the top of the second page.

A. Yes. I have read that paragraph.

Q. In June of 1945, the Hume Company was a member of the C. P. & G., is that correct?

A. That is correct.

Q. This contract therefore covered the relationship between the Hume Company and the AFL union?

A. That is correct.

Q. I am referring now to Board's Exhibit 4(b).

A. That is correct.

Q. Beginning, then, upon the date of the execution of this contract, that contract was in effect, insofar as the Hume Company was concerned?

A. Yes. [300]

Q. I will show you also Board's Exhibit 8, an agreement dated March 25, 1946. Is that agreement presently in effect?

A. It is.

Q. The Hume Company is still a member of the C. P. & G.?

A. It is.

Q. Is the green book contract, as supplemented and amended, also in effect, or is the green book contract no longer in effect, so far as the Hume Company is concerned?

A. I cannot answer that question.

Mr. Edises: What was the answer, please?

(The answer was read.)

(Testimony of Thomas D. Birchall.)

A. I perhaps would know him if I saw his statement. I do not connect his name with the face.

Mr. Jennings: I have nothing further.

Q. (By Mr. Edises): Mr. Birchall, may I see the memorandum that you used in your testimony?

(Witness hands document to counsel.)

Q. Will you read the item which is set forth here as paragraph No. 4, please? Just read it aloud into the record.

A. "At the time of the fall spinach signup, the management, R. G. Hume, was told by the union representatives, Brown and Evans——"

This has already been read in the record.

Q. That is right. [302]

A. "—to lay off those workers who refused to sign up. These included full time workers who had been working all year. Whereupon Brown and Hume placed a call to the C. P. & G. to check the legality of the union's request. A conversation between Hume and Clough. Clough advised that the company had no right to discharge workers——"

Q. Who is Clough?

A. Clough is a member of the staff of C. P. & G.

"—for their refusal to sign with the union. The company conveyed this information to the union."

Mr. Tobriner: Object to further reading of this. I do not see the point of it. What goes on within the C. P. & G. is not the concern of any of the parties. I move that it be stricken, Mr. Trial Examiner.

(Testimony of Thomas D. Birchall.)

Trial Examiner Myers: Overruled.

A. (Continuing): "The company conveyed this information to the union, and acted accordingly. Before checking with the C. P. & G., the company was under the impression that the worker had to sign up in order to stay on the job, and those workers who were hired were so informed. This position was reversed and clarified upon receipt of the C. P. & G.'s advice. No workers were discharged at this time because of their failure to sign up."

Q. Does that statement that you have just read comport with the fact, that is, this actually happened?

A. That is true, but you must understand that there was a great deal of confusion in our minds at this time, and we were seeking a solution to this thing. At the moment that was the information we had at hand. However, we did not continue to follow this policy, as the record will show.

Q. Do you have the FTA newspaper from which you read an excerpt a moment ago?

A. I do. (Handing document to counsel.)

Q. Where was the part that you read?

A. (Indicating.)

Q. Please read the remainder of that extract; rather, the remainder of the article from which you read an extract, starting here. (Indicating.)

A. "As a result of the FTA victory over the AFL Teamsters at the government elections, the United States government laws grant us the right

(Testimony of Thomas D. Birchall.)

to operate as a union of the Northern California Cannery Workers.

“President Donald Henderson pointed out: ‘We are within our full rights in refusing to pay AFL dues and in paying CIO dues. Nobody is going to be fired for refusing to pay AFL dues. However, in cases where workers still find it necessary to pay AFL dues, the FTA will give full credit for dues paid to the AFL.’

“Our position, however, is that cannery workers need not pay AFL dues and should pay FTA-CIO from now on, in order to build a strong union, supported with funds to help win their demands. FTA members may take withdrawal cards between seasons, or can remain as voting and participating members in the local union by paying unemployed dues.”

Mr. Edises: Thank you. That is all.

Mr. Jennings: I have just a couple of questions, Mr. Examiner.

Trial Examiner Myers: Very well, sir.

Q. (By Mr. Jennings): Referring to these notes that you have on the last page, there is a rather long list of names. No. 22 is the name of J. M. Smith, No. 32 is the name of Oscar Johnson. Can you tell me what that list of names represents?

A. It is headed “Men on Payroll, November 19th; Not on November 21st.”

Q. Does that mean they—

A. That is what it means.



(Testimony of Thomas D. Birchall.)

Q. Do you have any other notation with respect to J. M. Smith, which would indicate——

A. There is a series of check marks and signs on here, but I am afraid I cannot interpret them. I knew at the time, but I do not know now, what it means.

Trial Examiner Myers: Who made up that list?

The Witness: I made it up. No, I beg your pardon. It is in the handwriting of R. G. Hume; partially in my handwriting.

Trial Examiner Myers: What?

The Witness: I hasten to amend that. Partially in Mr. Hume's writing, and partially in mine.

Trial Examiner Myers: Who was that list composed?

The Witness: I think we were trying at that moment to determine just exactly who was standing where.

Trial Examiner Myers: When was it made?

The Witness: It was made some date after November 21st. I don't know the date.

Q. (By Mr. Jennings): There are some notations there indicating that one of the signs means, "Signed and no revocation". Do you find any signs?

A. That is right. We made some effort to trace these things out, but it is so confused that I would hesitate very much to make any statements about the accuracy of that without doing a lot of detailed checking.

Mr. Jennings: I see. That is all.

(Testimony of Thomas D. Birchall.)

Will that list remain here?

Mr. Agee: Oh, yes. We will have it marked for identification, if you would like.

Mr. Jennings: I just thought, when Mr. Hume takes the stand, there might be some questions.

Thank you. That is all.

Mr. Edises: I have no further questions.

Trial Examiner Myers: Any other questions?

Mr. Tobriner: One or two questions.

Q. (By Mr. Tobriner): Mr. Birchall, when you referred to a Robert, Bob Clough, Mr. Clough is not an attorney, is he?

A. No. Mr. Clough is a member of the staff, an employee. He was characterized as an employee.

Trial Examiner Myers: Do you know what his position is with the company, that is, the Association?

The Witness: I do not, other than that he is an employee.

Trial Examiner Myers: Did you ever consult him?

The Witness: Oh, yes, I have talked with him.

Trial Examiner Myers: About what?

The Witness: Matters concerning employee and employer relationships.

Trial Examiner Myers: Did you ever get a letter from him?

The Witness: I think there are letters in the

(Testimony of Thomas D. Birchall.)

company files signed by him, possibly. I am not sure about it.

Trial Examiner Myers: You do not know how he signs his name?

The Witness: No.

Trial Examiner Myers: Have you any letters in your files here?

The Witness: No, not here; no. I may point out that yesterday that point was brought up in testimony, and he was characterized as an employee of the C. P. & G. [308]

Trial Examiner Myers: What is he? Do you know?

The Witness: Well, he——

Trial Examiner Myers: Is he an office boy, or a messenger, or what?

The Witness: I think he is a representative in the field for the organization, C. P. & G.

Trial Examiner Myers: What do you consult him about?

The Witness: Matters of labor relations.

Trial Examiner Myers: Does he come to the plant?

The Witness: Occasionally he comes to the plant.

Trial Examiner Myers: Where is his office?

The Witness: His office is in Oakland, in the Financial Center Building, the C. P. & G. office.

Trial Examiner Myers: Are there any other questions?

(Testimony of Thomas D. Birchall.)

Q. (By Mr. Tobriner): The C. P. & G., of course, has its attorney, Paul St. Sure, has it not?

A. That is right.

Q. His office is not with Paul St. Sure?

A. It is not with Paul St. Sure.

Q. That list that you had there, with these various markings on it, was that drawn up to show who had made revocations and who had not made revocations, who had cleared with the AFL and who did not, and that kind of thing?

A. That is right. It was an effort made by the company to find out who was working and who was not working, and where they stood, so we would know how to proceed with our operations. It is very confusing to run a plant and deal with the unions, too.

Q. It was not the purpose to find out who was in the CIO, was it?

A. Not particularly. We were not concerned with their membership in any union.

Mr. Tobriner: I see. That is all. Thank you.

Trial Examiner Myers: Any other questions, gentlemen?

Mr. Jennings: Nothing.

Trial Examiner Myers: You are excused. Thank you very much.

(Witness excused.)

Mr. Agee: Mr. Gallardo, will you step up, please?

ARTHUR A. GALLARDO

a witness called by and on behalf of the Respondents, G. W. Hume Company and California Processors & Growers, Inc., being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: What is your name, sir?

The Witness: Arthur A. Gallardo.

Trial Examiner Myers: Will you please spell your last name for the record?

The Witness: G-a-l-l-a-r-d-o. [310]

Trial Examiner Myers: Where do you live, sir?

The Witness: Turlock.

Trial Examiner Myers: You may be seated, sir.

You may proceed, Mr. Agee.

Q. (By Mr. Agee): Are you employed by the Hume Company at Turlock? A. Yes, I am.

Q. In what year did you first commence your employment with that company? A. 1919.

Q. Have you worked continuously for that company ever since? A. Yes, I have.

Q. What is your present position with the company?

A. Well, I am Assistant Superintendent.

Q. Were you Assistant Superintendent from the year 1940 on? A. Yes.

Q. You are familiar with the fact, are you not, that a union was organized there at the plant in 1940? A. Yes.

Q. And that was an AFL union, Local No. 22382? A. Yes.

(Testimony of Arthur A. Gallardo.)

Q. Did you know who was the man who organized that local, and who was its Business Agent at that time? A. R. M. Tomson. [311]

Q. And he continued as business agent for the local for several years thereafter, did he?

A. Yes.

Q. Who was the shop steward at the Hume plant during that time?

A. Well, they had two different shop stewards. There was one of the shop stewards that was named Ralph Hance.

Q. How do you spell it?

A. H-a-n-c-e. And he left the Hume Company and came to work at Flotill's. I don't know exactly what the date was. In fact, I am not sure of the year, but he was succeeded by Irwin C. Heagle, and Heagle was shop steward there—oh, I guess, for at least two years.

Q. Did your duties as Assistant Superintendent have to do with the discharging of employees from time to time?

A. I beg your pardon? I didn't get the question.

Q. Did your duties as Assistant Superintendent have to do with the discharging of employees from time to time? A. Yes.

Q. Were there occasions during the years from 1940 to 1944, inclusive, when a representative of this Local 22382 would come to you and request that certain employees be discharged?

A. Yes.

(Testimony of Arthur A. Gallardo.)

Q. Was there just one or two of those occasions, or were there numerous occasions when that occurred?

A. Well, there were numerous occasions.

Q. During that entire period of time, was there any time when you did not comply with that request and go ahead and discharge the employee in question?

A. No. I would inform the employee that they had to clear with the union, or they could not work there, and most of the time they just would not show up any more. I would just tell them they could not work there. I never came right out and definitely told anybody, "You are fired." I would just inform them of the fact that they would have to have a clearance with the union, or they could not work in the cannery, and they usually did not work, or else they got a clearance.

Trial Examiner Myers: Did you tell them what union?

The Witness: The Cannery Workers Union, 22382. That is the one that was in effect down there.

Mr. Agee: You may cross-examine.

Trial Examiner Myers: Any questions?

Mr. Tobriner: No questions.

Mr. Jennings: No questions.

#### Cross-Examination

By Mr. Edises:

Q. These persons whom you discharged on re-

(Testimony of Arthur A. Gallardo.)

question of the AFL, were these new employees, or were they old employees?

A. Most of them were old employees, but I believe there were a few new ones in there. In fact, some of them I did not even know their names.

Q. Old employees in the sense that they had worked for you in previous seasons?

A. Well, not necessarily worked for me. I had seen them around the plant. They had worked in other departments.

Trial Examiner Myers: When he says "new", he means the Hume Company.

The Witness: Oh, yes. Yes.

Mr. Edises: No further questions.

Mr. Tobriner: No questions.

Mr. Agee: That is all.

Trial Examiner Myers: You are excused. Thank you.

(Witness excused.)

Mr. Gallardo: Am I permitted to go now?

Trial Examiner Myers: Yes, sir. Thank you.

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## RAYMOND G. HUME

a witness called by and on behalf of the Respondents, G. W. Hume Company and California Processors & Growers, Inc., being first duly sworn, was examined and testified as follows:

### Direct Examination

Trial Examiner Myers: What is your name, sir?



(Testimony of Raymond G. Hume.)

The Witness: Raymond G. Hume.

Trial Examiner Myers: Where do you live, sir?

The Witness: Turlock.

Trial Examiner Myers: You may be seated, Mr. Hume.

You may proceed, Mr. Agee.

Mr. Agee: May I state at this time, Mr. Jennings, that during the noon recess I drove to Turlock and interviewed Mr. Fordham, the Plant Superintendent, and when this man returns to Turlock, he will cause Mr. Fordham to come back up here. But, the one point I wanted to question him about, and I will state what he will testify to, is this: he will say that these workers, headed by Mr. Heagle, collected outside of his office on the morning of November 21st of 1945, and Heagle asked him if they could go to work. Fordham replied that they could not until they had cleared with the union and until they did so, they would have to get off the company property. He will deny that he used the word "fired", or said anything more to Mr. Heagle, other than I have recited, and that he said it in a tone of voice loud enough for the persons collected around Heagle to hear him.

If you want, I will have him come up.

Mr. Jennings: I would stipulate that.

Trial Examiner Myers: Do you want a few minutes?

Mr. Jennings: No. I would say this: I would stipulate that if Mr. Fordham were called, he

(Testimony of Raymond G. Hume.)

would so testify, but the employees have testified something other than that.

Mr. Agee: That is our stipulation now, and that was our stipulation before. We do not say as to the truth of your witness. We do not say the truth of ours. We just stipulated that if they were called, they would so testify. [315]

Trial Examiner Myers: That is going to be very confusing for me when I go to resolve the conflict of testimony. I tried to point that out yesterday. As long as you cannot agree, I think you had better call Mr. Fordham.

Q. (By Mr. Agee): What is your full name, sir? A. Raymond Gorham Hume.

Q. Are you connected with the Hume Company at Turlock? A. I am.

Q. What position do you hold with that company? A. President.

Q. In what year did you first become President of the company? A. 1941.

Q. Mr. Hume, you are familiar with the fact, are you, that a union was organized there at the plant in the year 1940? A. Yes.

Q. And that that was a union affiliated with the AFL, is that correct? A. That is correct.

Q. In the ensuing years from 1940 to 1944, inclusive, the company made contracts annually with that union? A. That is correct.

Q. Those contracts were on a yearly basis, and would expire each year on March 1, is that correct?

A. Yes. [316]

(Testimony of Raymond G. Hume.)

Q. During the years from 1940 to 1944, inclusive, do you know who was the Business Agent for that union?      A. R. M. Tomson.

Q. During that period did you have dealings with him from time to time in connection with the union business with the company?

A. Yes, I did.

Q. Do you know of your own knowledge whether, during those years, from time to time Mr. Tomson would make requests that certain employees be discharged by your company because they were not members in good standing with his union?

A. I believe he did make that request on occasion.

Q. Who in your plant was given the responsibility or the duty of attending to that matter?

A. Usually Mr. Gallardo.

Q. That is the witness that just left the stand, is that correct?      A. That is right.

Q. Can you fix approximately when you first became aware of efforts by the CIO to organize the workers in your plant?

A. Well, just roughly I would say the fall of 1945; fall and summer of 1945.

Q. What occurred at that time, that you know of?

A. Well, not a great deal, just talk by some of the men around the plant that the CIO was interested in organizing the company, but aside from that, there was nothing very much.

(Testimony of Raymond G. Hume.)

Q. Was there any occasion during the year 1945 when there was any stoppage of work in the plant?

A. Would you repeat that again?

Trial Examiner Myers: Will the reporter please read the question to the witness?

(The question was read.)

A. Yes.

Q. When did that occur during the year 1945?

A. That occurred on November 20th.

Q. Was it in the day time or in the evening?

A. Well, the trucks were tied up in the evening.

Trial Examiner Myers: Of the 19th?

The Witness: Of the 19th, and the plant was picketed on the morning of the 20th.

Q. (By Mr. Agee): Does your company have any trucks of its own to haul produce into the plant?

A. We have a truck.

Q. One truck?

A. One truck; not satisfactory for our hauling purposes.

Q. Your hauling is done by outside trucking concerns?

A. That is correct.

Q. When you speak of the trucks being stopped or held up on the evening of November 19, 1945, you mean trucks operated by outside concerns?

A. Yes, by the E. G. Swanson Company.

Q. Of Sacramento?

A. No. Turlock.

Q. And the following morning you mentioned a picket line. Did that picket line have any insignia

(Testimony of Raymond G. Hume.)

or designation that they carried to indicate what their affiliation was?      A. AFL.

Q. Was the plant in operation on that day in question?

A. Couldn't operate; didn't have any raw supply.

Q. Were there workers that were admitted or got into the plant and took their stations ready to go to work?      A. On the 20th, yes.

Q. There were no operations that day, because there was no spinach?      A. No raw supply.

Q. On the following day, November 21st, what were the conditions in that respect that existed there at the commencement of the work day?

A. Well, we would be allowed to operate and haul the spinach into the plant, provided certain workers were eliminated by us.

Q. Who was it that made that demand upon you?      A. Mr. Torreano.

Q. Who was Mr. Torreano, and what was his position? [319]

A. He was the head of the AFL Local 22382.

Q. When that demand was first made, was it oral or was it in writing?      A. Oral.

Q. Was it communicated directly to you, or over the telephone?

A. The first I knew of trouble existing was when the trucks were tied up that night of the 19th. Then the next day the demand was made orally——

Trial Examiner Myers: By whom?

The Witness: By Mr. Torreano.

(Testimony of Raymond G. Hume.)

A. (Continuing): —that certain men be eliminated from the plant before we could start our operations.

Q. Was that followed up by a written demand?

A. That was immediately followed up by a letter. I believe that was over the telephone. I cannot recall exactly.

Q. But in any event it was immediately followed up by a letter?

A. It was immediately followed up by a letter, which he followed up in person with a written demand.

Q. And Mr. Torreano brought it down to the plant personally?      A. He did.

Q. And it was delivered to you?

A. It was.

Q. Was anything said by him as to what would happen if the company did not comply with the union demand to dismiss these men?

A. Could not operate.

Q. Is it possible for your plant to operate unless the trucks haul the produce into the plant?

A. No.

Q. In other words, your plant is completely tied up, unless you can get the trucks in and out, is that correct?      A. Right.

Q. And the trucks drivers coming in and out of the plant were all affiliated with what union?

A. I believe the AFL Teamsters.

Q. When you got this demand from the union,

(Testimony of Raymond G. Hume.)

did you communicate to the employees that were involved or listed?      A. Yes.

Q. Do you recall where you were and where they were when you communicated that to them?

A. In front of the boiler room.

Q. On the plant premises?

A. Yes, on the plant premises.

Q. Do you recall whether or not all of the men who appeared upon the list were present at that time?      A. No, I do not.

Q. Who was it that made the statement on behalf of the company to the men that their dismissal had been requested by the union? [321]

A. Mr. Heagle.

Q. Were you present when he read off the list?

A. I read a list of names to Mr. Heagle. I presume that most of the men were present, and later I went to the warehouse personally and dismissed the warehouse crew, who were also on this list.

Q. And the meeting in front of the boiler room with Mr. Heagle and these other men present, what part did Mr. Heagle take in that discussion? What did he say in substance? Did he read off anything to the men?

A. I believe I handed him the memorandum with the names on it, and he called off the names on this list, stating that I said that they would be laid off.

Q. Before Mr. Tomson had been relieved or divested of his office as Business Agent of the union, had Mr. Heagle been a shop steward under him?      A. Yes.

(Testimony of Raymond G. Hume.)

Q. At the time, then, Mr. Tomson was divested of his office as Business Agent, was Mr. Heagle also divested of his office as shop steward?

A. I do not believe right at the moment that Tomson left, but shortly thereafter.

Q. At the time in question, that is, November 20, 1945, was Mr. Heagle then acting as shop steward?      A. No.

Q. After this discussion in front of the boiler room, did these men that were in that meeting leave the plant?      A. Yes.

Q. Do you know whether they returned or attempted to return the next day?

A. I was not present, but I heard they attempted to return.

Q. On the following day, November 21, 1945, was the plant in operation?

A. On November 21st?

Q. Yes.      A. Yes, it was.

Q. Was the picket line thrown across the gateway to the plant on that date? If you know.

I had better ask first: were you there?

A. No, I was not there at that time of the morning.

Q. About what time on November 21, 1945, did you arrive at the plant?

A. I think it was around 10:30 or 11:00 in the morning.

Q. On November 21st, when you got there, at that time the plant was then in operation, was it?

A. Yes, it was.



(Testimony of Raymond G. Hume.)

Q. Spinach had been hauled in in the meantime, had it?      A. That is right.

Q. At the time you got there, were any of these employees whose names had appeared upon this list that we have mentioned, did you see any of them present in or about the plant? [323]

A. There were quite a few of the employees around the plant—not in the plant—they were around it. I will say it this way: they were off the property, but they were around.

Q. Before March 1, 19—withdraw that.

The existing contract that you had with Local 22382, that is, the one that existed during the month of November, 1945, by its terms was to expire on what date?      A. March 1st of 1946.

Q. Before March 1, 1946, were you given a demand by the union, that is, by the AFL union, that you sign up an exclusive bargaining contract with them, with closed shop provisions?

A. We were asked to, yes.

Q. Was that asking accompanied by any statement as to what would happen if you did not comply with that request?      A. It was intimated.

Q. That what?

A. That we would not be able to operate.

Q. In your opinion, had you not entered into the contract which you subsequently did, with that union, would your plant have been able to operate?

A. We know that it would not, because we did not enter into any agreement until the absolute

(Testimony of Raymond G. Hume.)

deadline. The trucks were tied up, so therefore we were forced to enter into an agreement.

Q. The agreement that you entered into under those circumstances was made on what date?

A. March 25, 1946.

Q. Between March 1, 1946, and March 25, 1946, what occurred in connection with the operation of the plant or the stoppage of operation of the plant?

A. Trucks were not allowed to come in or out of the warehouse. We were not operating at the time. The picket was placed down by the warehouse, so that no trucks could come in or out.

Trial Examiner Myers: Do you mean by that, that you could not operate on account of the picket line?

The Witness: No. I mean that we could not make any truck shipments from our warehouse.

Trial Examiner Myers: But if this situation did not arise, would you have been in production?

The Witness: No, we would not have been in production.

Trial Examiner Myers: When would you have started production?

The Witness: March 25th.

Trial Examiner Myers: That was your ordinary date?

The Witness: That was the start of our spinach season. Up until that time we had not been operating.

Trial Examiner Myers: But if things were run-

(Testimony of Raymond G. Hume.)

ning smoothly, without any trouble at all, when would you have started your spinach? [325]

The Witness: That same day.

Trial Examiner Myers: That same day?

The Witness: Yes.

Trial Examiner Myers: So anything than transpired between the 1st of March and the 25th of March has nothing to do with your plant at all, is that it?

The Witness: It has only to do with it to this extent, that we were not allowed to ship any truck shipments of canned goods out of the warehouse.

Trial Examiner Myers: You would have ordinarily shipped some out during that period?

The Witness: Yes.

Trial Examiner Myers: But you would not have received anything in during that period?

The Witness: We could not receive anything in.

Trial Examiner Myers: Ordinarily, I mean.

The Witness: Well, ordinarily we receive a few things in, but they are not major necessity.

Q. (By Mr. Agee): Between March 1, 1946, and March 25, 1946, the bulk of the work or operations there would consist of shipments going out of the plant from the warehouse?

A. That is correct.

Q. And those shipments of course are customarily hauled by truck, are they? [326]

A. Partially rail, partially truck.

(Testimony of Raymond G. Hume.)

Q. Were any shipments during that period made out of the plant by way of rail?

A. Yes.

Q. Were any shipments during that period made out of the plant by way of trucks? A. No.

Q. You say there was a picket line maintained during that period? A. Correct.

Q. By whom? A. The AFL.

Q. Did the Teamsters who were driving the trucks observe that picket line? A. They did.

Q. None of them went through? A. No.

Q. You knew that if the picket line was maintained, that no incoming trucks could haul produce into the plant, is that correct?

A. That is correct.

Q. March 25th. Do you recall the day of the week that would be?

Trial Examiner Myers: You have a calendar right behind you.

Mr. Agee: Oh.

Q. (By Mr. Agee): That would be a Monday?

A. Monday the 25th, yes.

Q. That was the day, was it, that this contract was signed up, pursuant to the demand of the union? A. Yes.

Q. Did the company commence canning operations on March 25th and carry on continuously thereafter? A. We did.

Q. Mr. Hume, on March 25, 1946—and will you please answer this just yes or no—did you on that

(Testimony of Raymond G. Hume.)

date have an opinion as to *was* the majority union among the workers there in the plant?

Mr. Edises: Just a moment, please.

Read the question, please.

Mr. Agee: Let me reframe it, and then he can object to it before it is answered.

Trial Examiner Myers: Do you withdraw the question?

Mr. Agee: Yes, I do. It is very poorly worded.

Q. (By Mr. Agee): Did you, on March 25, 1946, have an opinion as to whether the majority of your employees at that time were members of this AFL union mentioned here, or whether a majority of your members were either affiliated with some other union or unaffiliated with any union?

Mr. Agee: Just a minute. Do not answer. There is an objection.

Mr. Edises: That calls for a yes or no answer.

Mr. Agee: That is right.

Mr. Edises: O.K.

Mr. Agee: Now will you answer the question?

A. Yes.

Q. (By Mr. Agee): Did you make any investigation, or cause any investigation to be made, or from what sources did you have any information to enable you to make up your opinion on that matter?

Mr. Jennings: I would object to that, Mr. Examiner. Obviously it is getting into the question of the state of mind of the employees in the Hume plant, something that the Board is endeavoring to

(Testimony of Raymond G. Hume.)

ascertain in the representation proceeding, and which it is the function of the Board to ascertain. That proceeding was then pending before the Board. Object on the further ground that the state of mind of the employees in the Hume plant is immaterial, because that is one plant in the C. P. & G. unit, and even though all of them might desire to be represented by one union, the unit is not the Hume plant but the entire C. P. & G.

Trial Examiner Myers: Will you read the question, please.

(The question was read.)

Trial Examiner Myers: You had better reframe the question. [329]

Q. (By Mr. Agee): Do you have any information that you had received prior to March 25, 1946, concerning the matter upon which you just stated you did have an opinion?

Mr. Jennings: Same objection.

Mr. Edises: I will join in that objection, adding the further ground, Mr. Examiner, that the representation proceedings——

Trial Examiner Myers: I know, but I think your objections are premature. That is what I am trying to ascertain.

Will you read that question, please?

(The question was read.)

Mr. Edises: That too calls for a yes or no answer.

(Testimony of Raymond G. Hume.)

Trial Examiner Myers: I will overrule the objection. Do you want the question read?

The Witness: Please, may I have the question?

(The question was read.)

A. No.

Mr. Edises: What was the answer?

(The answer was read.)

Q. (By Mr. Agee): Upon what did you base your opinion which you said you had on March 25, 1946?

A. Only the fact that we had always been AFL.

Q. And your previous contracts had always been with AFL? A. That is correct.

Q. Had the company ever had any previous contracts with any other union organization than the AFL? A. No.

Q. When I speak of the "AFL," we both understand that we mean 22382, is that correct?

A. Right.

Mr. Agee: You may cross-examine.

#### Cross-Examination

By Mr. Tobriner:

Q. Mr. Hume, calling your attention to this contract with 22382 which you just referred to, Board's Exhibit 8, what was its relationship, if any, to the green book contract? Is it a fact that you continued to recognize the green book contract

(Testimony of Raymond G. Hume.)

except for the subject matter of Board's Exhibit No. 8?      A. Yes.

Q. Was Board's Exhibit No. 8 a contract with 22382, AFL?

Mr. Jennings: Objected to, Mr. Examiner, as calling for a conclusion of the witness.

Trial Examiner Myers: Sustain the objection.

Mr. Jennings: The contract speaks for itself.

Q. (By Mr. Tobriner): Do you deal with 22382?      A. Yes.

Mr. Tobriner: That is all.

Trial Examiner Myers: Mr. Jennings, any questions?

Q. (By Mr. Jennings): I will show you, Mr. Hume, a list which has been identified by Mr. Birchall. Is that list in your handwriting? [331]

A. It is.

Q. Can you tell me what that list purports to be, or what it is?

A. That is a list of names of people that were on our payroll (it so states at the top) on November 19th, who were not on our payroll on November 21st.

Trial Examiner Myers: What do you mean by that? They were fired, or laid off?

The Witness: I do not mean that. I mean exactly what I say.

Trial Examiner Myers: What happened?

The Witness: I made a comparison between the two payrolls. Some of the people no doubt were laid off, because I laid off some people, but this



(Testimony of Raymond G. Hume.)

list is not representative of the people that I laid off.

Q. (By Mr. Jennings): I will show you——

First of all, there are a total of names of 33 men and 32 women, is that correct?

A. I do not know offhand.

(After examining document.) There are 33 men, all right, according to these numbers here. 32 women.

This is not in my handwriting (indicating).

Q. I think Mr. Birchall identified that second part as his handwriting.

Showing you No. 22 in the list of names of men, J. M. Smith, do you know Mr. Smith?

A. J. M. Smith? Offhand, I do not recall him.

Q. Do you know whether or not he was one of those who was laid off?

A. I would have to see the list on that.

Q. I can tell you his name is not on the list, Mr. Hume. A. Then he was not.

Q. Do you know Mr. Oscar Johnson?

A. Oscar Johnson?

Q. He was the young fellow employed as a warehousemen in November of 1945. He was then about 19 years old, I think.

A. I probably know him by sight.

Q. Do you remember whether or not he was working in the warehouse at that time?

A. On November 19th?

Q. Yes. A. Offhand, no.

Trial Examiner Myers: Why do you say that

(Testimony of Raymond G. Hume.)

Smith was not laid off on November 20th? Because his name is not on that list?

The Witness: I laid off a certain group of people that I read off their names to, and anybody else that was not there on the 21st, I did not have anything to do with. That is what I am driving at.

Trial Examiner Myers: You mean, the 20th?

The Witness: Well, the 20th.

Trial Examiner Myers: That is when you read the list?

The Witness: That is right, on the 20th.

Trial Examiner Myers: A man by the name of Moore, whose name is not on that list, Board's Exhibit 8, according to the testimony was laid off because somebody from the union called up and said that by mistake they forgot to include the name of Moore. Do you remember that incident?

The Witness: I believe Mr. Moore—he was in the warehouse, and it was assumed that the whole warehouse was on the list, and I laid off the warehouse, so Mr. Moore was included.

Trial Examiner Myers: You do not know where Mr. Smith was working?

The Witness: Mr. Smith? Offhand, no.

Q. (By Mr. Jennings): You say you laid off the entire warehouse crew? A. Yes.

Mr. Jennings: That is all.

Mr. Edises: No questions.

Mr. Agee: I would just like to ask one more question, if I might.

(Testimony of Raymond G. Hume.)

Redirect Examination

By Mr. Agee:

Q. I show you Board's Exhibit 7, headed, "Dues Collections and Check-off," and ask you if that was the agreement that you entered into with 22382 on August 21, 1944?      A. Yes.

Q. At the time, and following the execution of this agreement, did you cause the employees in the plant to be notified of the execution of the agreement?

A. I believe at that time we posted a notice that we were on a check-off system from here on out. I mean, from that time out.

Q. From whom did the demand come for the execution of that agreement?

A. The check-off agreement?

Q. Yes.      A. Mr. Tomson.

Q. He was then the Business Agent of 22382?

A. He was.

Mr. Agee: I think that is all.

Trial Examiner Myers: Any other questions, gentlemen?

Mr. Jennings: I have nothing.

Trial Examiner Myers: You are excused, Mr. Hume. Thank you very much.

(Witness excused.)

Mr. Agee: At this time we would like to offer the letter of February 27, 1946, to the Honorable Jack Z. Anderson, signed by Paul M. Herzog, which

was referred to by Mr. St. Sure in his examination yesterday, and coupled with his statement at that time that if those copies were not satisfactory, he could furnish a photostat of the original and attach it to the record.

Mr. Jennings: May we go off the record just a minute?

Trial Examiner Myers: Off the record. We will take a short recess, and you can discuss that.

(Whereupon a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Myers: Are you ready, gentlemen?

Mr. Jennings: Ready.

Trial Examiner Myers: Will you call your next witness, please, Mr. Agee?

Mr. Jennings: Mr. Examiner, with respect to the copies of a letter dated February 27, 1946, now marked Hume Exhibit No. 4 for identification, of course I have no knowledge concerning the matter, but upon Mr. St. Sure's statement that he knows that such a letter was written, and that he has a photostat of the original, I have no objection upon the ground of authenticity. I do object upon the ground of immateriality, and parenthetically I can say that if the Chairman of the Board did not write that letter, of course——

Mr. Agee: He will know about that.

Mr. Jennings: ——he will know that he did not.

Trial Examiner Myers: Is there any other objection? [336]

(No response.)

Trial Examiner Myers: The letter is already in the record, so there is no use of my sustaining your objection.

Mr. Jennings: I believe a great part of it has already been read. That is correct.

Trial Examiner Myers: So I will overrule the objection and receive the letter in evidence, and ask the reporter to please mark it as Hume's Exhibit No. 4.

(The document referred to was marked Hume's Exhibit No. 4, and was received in evidence.)

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#### HUME EXHIBIT No. 4

Honorable Jack Z. Anderson  
House of Representatives  
Washington, D. C.

Dear Congressman Anderson:

I hasten to reply to your letter of February 25 with reference to the difficult situation faced by the California cannery industry. My colleagues and I realized that, unless both unions were willing to exercise self-restraint, some of these problems might arise as a result of our recent decision setting aside the October elections. I am sure, however, that you would not have wanted the Board to reach any

decision other than that which a majority of us thought was required as a matter of good conscience under the law.

The language in the opinion to which you allude was simply a declaration of the law as we see it and as the courts have interpreted it. It is true that the Board could not and did not order the employers to take or refrain from taking any particular action in this representation case in the same sense that it would have had power to do so in an unfair labor practice proceeding. We nevertheless considered it our duty to call the parties' attention to their rights and obligations under the law, so that they might govern their conduct accordingly between now and the time a new election can be conducted. It would certainly have been less fair to say nothing on the subject, and then to take action against the employers later, if they engage in the conduct which we believe would be unlawful. It certainly will not be the Board's fault if either or both labor organizations see fit to try to force the employers into a situation which may require them, in order to save their crops, to disregard their obligations under the National Labor Relations Act.

You may, therefore, wish, perhaps with other members of the California Delegation, to call upon either or both of the competing labor organizations to exercise the self-restraint suggested above in the interest of the welfare of the people of California and the nation. I am sure that the United States Conciliation Service would be available to offer assistance in this matter.

We do not see how we can modify the recent decision as you suggest, so as to expressly authorize the C. P. & G. to renew the old contract with the AFL in its present form. It should be remembered that a closed shop agreement is only valid under Section 8(3) of the Act if it is made with a labor organization which represents a majority of the employees when made. One could hardly say that the A. F. of L. union surely does represent such a majority as of March 1946, in view of the continued pendency of the Board's election case and, indeed, of the results of the very election that was set aside.

Moreover, the Board has frequently held it to be an unfair labor practice for an employer to grant exclusive recognition to a union during the pendency of an election case, primarily because such action would inevitably favor the recognized faction as against any other union which might be on a future ballot.

The Board Members are not blind to the practical problems presented and fully understand the appeal for help that is coming from the industry. This, however, can hardly justify us in failing to administer the Act as written and as construed by the courts. The ideal solution would be to have an extremely early new election. We would be only too glad to do that if anyone can suggest a basis upon which a representative-sized vote can be polled, with proper procedural safeguards, at an early point in the 1946 season.

Very sincerely yours,

/s/ PAUL M. HERZOG,

Chairman.

Mr. Jennings: Two of the other gentlemen, Mr. Bishop and Mr. Berry, who are named in the charge, are here. I assume nobody wants to examine them?

(No response.)

(Whereupon, Mr. Bishop and Mr. Berry left the court room.)

Mr. Agee: May I proceed, Mr. Examiner?

Trial Examiner Myers: Certainly.

Mr. Agee: I would like to read in the record an excerpt from the transcript of the proceedings before the National Labor Relations Board in the matter of Bercut-Richards Packing Company, Case No. 20-R-1414, et al., which took place at Washington on January 24, 1946.

Trial Examiner Myers: What is this, the oral argument?

Mr. Agee: No, this is a statement by Mr. Reilly, a member of the Board. [337]

Trial Examiner Myers: During the oral argument?

Mr. Jennings: That is correct.

Mr. Agee: The lines on these pages are not numbered, but I am referring to page 91, and to the five lines that go to make up the second paragraph appearing on that page. For the sake of convenience, I will add what appears above it, so as to include what Mr. Jennings has in mind, and we can get it all in at once. That would commence on page 90, at the bottom of the page.

Mr. Jennings: I might say, Mr. Examiner, that



the part Mr. Agee wants to read is a paragraph immediately following the portion of the argument which I offered as Board's Exhibit 6.

Trial Examiner Myers: Very well.

Mr. Edises: I want to make an objection to the reading of the extract referred to. As I understand it, it is a statement made by Mr. Reilly, a member of the Board, in the course of oral argument. Mr. Reilly, although a member, is of course not the Board but merely a member of the Board, and consequently anything that he stated would be merely the opinion of a member of the Board.

Second, anything that he said in the course of oral argument could not be deemed an order, nor could it be deemed to have any operative effect of any kind.

Trial Examiner Myers: That goes to the weight of the evidence, your objection, not to its admissibility.

Mr. Edises: I want to suggest, then, that before——

Trial Examiner Myers: Mr. Jennings offered something in there. Mr. Reilly asked a question. Mr. St. Sure answered that question. Now Mr. Agee wants to show what transpired after that. I think he has a perfect right to do that.

Mr. Edises: Mr. Examiner, may I say that what Mr. Jennings offered in evidence was a statement by counsel for the Respondent in this case, and consequently it had the effect of serving as an admission. What is intended to be offered here is not admissible on any rule of evidence that I know of,

because it is the statement, not of an agent for any of the parties, but of a member of the Board.

Trial Examiner Myers: We will just take that into consideration. Overruled.

Mr. Agee: "Mr. Reilly: I do not see why there should be any confusion on that point, because our Order was very explicit. Nothing of a legal nature has transpired as yet to give anybody any rights at all. We have not changed the bargaining agent for anything that happened, yet."

Trial Examiner Myers: When did that take place?

Mr. Agee: On January 24, 1946.

Trial Examiner Myers: That preceded the issuance of the Supplemental Decision in that case?

Mr. Agee: Yes, that is correct. We offer it in connection with our actions taken on March 25, 1946, in signing up the contract which is in evidence with the AFL.

Other than the witness Fordham who is on his way here, we have no further evidence.

Mr. Jennings: I have one further matter which I have discussed with counsel, Mr. Examiner.

Trial Examiner Myers: All right. Go ahead.

Mr. Jennings: May it be stipulated by counsel that if Harry E. Pierson and Clyde Faddis were called as witnesses herein, their testimony would be substantially the same as that of the other employees named on Board's Exhibit 9, who have testified in this proceeding?

Mr. Agee: So stipulated.

Mr. Edises: So stipulated.

Mr. Tobriner: So stipulated.

Mr. Jennings: So stipulated.

Trial Examiner Myers: Very well, sir.

What about Smith? What is your position there, Mr. Jennings?

Mr. Jennings: So far as I can ascertain, Mr. Smith is in Los Angeles at the present time.

Trial Examiner Myers: He is not here, but I mean, as to what happened? Was he one of the fellows that were laid off on November 20th? Is that your contention? [340]

Mr. Jennings: That is my contention, that he was a seasonal worker who was in the group which gathered in front of Mr. Fordham's office on November 21st.

I have only an affidavit from Mr. Smith, and I have never interviewed him, Mr. Examiner, but I have the affidavit here. That is all I have.

Mr. Edises: As I understand the facts, Smith was admittedly an employee of the company. There is no question about that.

Mr. Agee: I don't know. No one has ever so stated to me.

Mr. Jennings: The record, Mr. Examiner, indicates that Mr. J. M. Smith was on the list of those who were working on the 19th of November, and not working on the 21st.

Trial Examiner Myers: That is right.

Mr. Agee: That is correct.

Trial Examiner Myers: The record shows that. This paper is not in evidence. Is anybody going to introduce it in evidence? (Indicating document).

Mr. Edises: I will offer that.

Trial Examiner Myers: Is there any objection?

Mr. Agee: No objection.

Trial Examiner Myers: There being no objection, the paper is received in evidence, and I will ask the reporter to please mark it as CIO Exhibit No. 1. [341]

(The document referred to was marked CIO Exhibit No. 1, and was received in evidence.)

1. Neal Watts x \*  
2. A.E. Moore x v \*  
3. Carl P. Peterson x v \*  
4. Leo Lombardo x v \*  
5. C. B. Bishop x v \*  
6. Harry Pierson x v \*  
7. R. B. White x v \*  
8. Arthur E. Berry x v \*  
9. H. F. Fryer x v \*  
10. J. J. Cobb x v \*  
11. Abe Thiesen x v \*  
12. Irvin C. Deagle x \*  
13. R. F. Rearick x v \*  
14. Thomas Buhl x v \*  
15. Clifford C. Luther x v \*  
16. Velen M. Ojebloom x \*  
17. Charles H. Furschknacht x \*  
18. Fred O. White x \*  
19. Marcel Robinson x \*  
20. Elmer Kueger x v \*  
21. Vanden Hartonck x \*  
22. J. M. Smith x \*  
23. W. F. Rogers x \*  
24. Clyde O. Faddis x v \*  
25. J. S. Bruchman x \*  
26. W. J. Fly x v \*  
27. J. Royal Pickens x \*  
28. R. F. Williams x \*  
29. Harold Dillard x \*  
30. Andy Richardson =  
31. Charles L. Young \*  
32. Oscar Johnson \*  
33. Archie Miller x \*  
Witness On Nov 19 not in record  
1. Margaret Watts x v \*  
2. Ruth White x v \*  
3. Cyrus Stephens x v \*  
4. Hazel Cole \*  
5. Mary Pantogopolus \*  
6. Bonnie Stewart \*  
7. Catherine Hobbs \*  
8. Bertha Wharton \*  
9. Ruby Kickey \*  
10. Dove Rogers \*  
11. Geraldine Adams \*  
12. Mary Jones \*  
13. Stella Helms \*  
14. Edna D. F. Givers \*  
15. Edna M. Koller \*  
16. Thelma Blackwood \*  
17. Lucie M. Miller \*  
18. Nina Rice \*  
19. Louise Emfinger \*  
20. Mary McNamee \*

now on payroll Nov 19 not in record

Deposed and no recitation  
Deposed and recited  
Have not recited  
Filed to court

NATIONAL LABOR RELATIONS BOARD  
CASE NO. 1221  
IN THE MATTER OF G. W. Hume  
DATE 4/11/46 WITNESS  
ETHEL E. FISHER, OFFICIAL REPORTER  
BY L. Breche



- |    |                 |     |                         |
|----|-----------------|-----|-------------------------|
| 21 | Margaret George | *   | quit for other reasons. |
| 22 | Ugeneve Alub    | *   |                         |
| 23 | Nipito Brown    | ✓ * |                         |
| 24 | Elenie Robinson | *   |                         |
| 25 | Carlisle Wright | *   |                         |
| 26 | Lelia Naples    | *   | new job                 |
| 27 | Dorothy Miller  | *   |                         |
| 28 | Helen Abel      |     |                         |
| 29 | Lula Walker     |     |                         |
| 30 | Lenora Benner   |     |                         |
| 31 | Mary Ann Cole   |     |                         |
| 32 | Louise Castro   |     |                         |

1	man	=	not on list
6	men	*	not on list
3	men	=	
<u>12</u>	men	*	on list





Trial Examiner Myers: We will take a short recess until Mr. Fordham gets here.

Mr. Tobriner: Mr. Trial Examiner, I have one witness. Perhaps we could go ahead with him.

Trial Examiner Myers: Mr. Fordham will be here any minute now, and it will break up the continuity of the situation, if you go ahead.

Mr. Agee: I might say that although he will be back as soon as Mr. Gallardo gets down to relieve him at Turlock, in the interests of time, I have already stated to counsel the substance of what I was going to question him about, so if Mr. Tobriner could be allowed to go on?

Trial Examiner Myers: All right. Is that agreeable to everybody?

Will you call your witness, Mr. Tobriner?

Mr. Tobriner: Mr. King.

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### WESLEY KING

a witness called by and on behalf of the Respondent Unions, International Brotherhood of Teamsters, et al., being first duly sworn, was examined and testified as follows:

#### Direct Examination

Trial Examiner Myers: What is your name, sir?

The Witness: Wesley King.

Trial Examiner Myers: Where do you live, Mr. King?

The Witness: 535 North Orange, Modesto.

(Testimony of Wesley King.)

Trial Examiner Myers: You may be seated.

You may proceed, Mr. Tobriner.

Q. (By Mr. Tobriner): Mr. King, what is your present position?

A. Business Representative, Local Union 22382, AFL.

Q. How long have you held that position?

A. Since June 12, 1945.

Q. Did you ever hold that position prior to that time?

A. Yes. I held that position July 5, 1943, until October 2, 1944.

Q. In such capacity, are you familiar with the records, papers, documents and files of 22382?

A. I am.

Q. I now show you a document which I will ask the reporter to mark for identification, entitled "Memorandum of Agreement Entered into this 3rd day of July, 1941, by and between G. W. Hume Company and the American Federation of Labor, Cannery Workers Union No. 22382."

(Thereupon the document above referred to was marked AFL Exhibit No. 3 for identification.)

Q. (Continuing) I show you this document, and I ask you if that is a document found among the files and records of 22382? A. Yes.

Q. Are you familiar with the signature of R. M. Tomson? A. Yes. [243]

Q. What position did he hold in 22382?

A. Secretary-Treasurer.

(Testimony of Wesley King.)

Q. Is that his signature upon that document?

A. Yes.

Mr. Tobriner: I ask that this be entered as AFL Exhibit No. 3.

Mr. Jennings: No objection.

Mr. Edises: No objection.

Trial Examiner Myers: There being no objection, the paper is received in evidence, and I will ask the reporter to please mark it as AFL Exhibit No. 3.

(The document heretofore marked AFL Exhibit No. 3 for identification was received in evidence.)

### AFL EXHIBIT No. 3

#### MEMORANDUM OF AGREEMENT

This Memorandum of Agreement, made and entered into this 3rd day of July, 1941, by and between the G. W. Hume Co., and the American Federation of Labor, by and through its Western Office, the National Council of Cannery and Process Workers, and The Cannery Workers Union No. 22382, an affiliate of the American Federation of Labor, adopt the attached printed agreement and promise to be bound thereby,

Witnesseth: That in consideration of the premises it is mutually agreed as follows:

1. That the attached printed agreement, which represents a collective bargaining agreement be-

(Testimony of Wesley King.)

tween the California Processors and Growers, Inc., and the American Federation of Labor through its Western Office, and the National Council of Cannery and Process Workers, and the Cannery Workers Unions chartered by the American Federation of Labor, be and the same is hereby adopted as to all its contents (excepting, however, in reference or references to the California Processors and Growers, Inc., that in their place and stead shall be substituted the name of the cannery or canneries signatory hereto as though they were direct parties to the printed agreement), and the contents of said printed agreement are hereby incorporated herein by this reference, with the same force and effect as if fully set forth herein.

2. That the terms of said agreement, in their entirety, shall be operative as of the date hereof, subject to acceptance in writing by all parties hereto.

3. That upon such acceptance, the wage provisions of said agreement, as distinguished from all other provisions, shall be effective retroactively to and including April 16, 1941.

4. That any disputes or differences concerning the amount or extent of such retroactive pay shall be subject to adjustment. As regards Section 8 of the collective bargaining agreement adopted herein it is specifically understood that the Adjustment Board will consist of 3 representatives of the Em-

(Testimony of Wesley King.)

ployer party to this agreement, and 3 representatives of the Union party to this agreement.

5. Retroactive pay will be paid not later than July 10, 1941.

G. W. HUME CO,  
(Employer)

By R. G. HUME,  
Vice Pres.

CANNERY WORKERS UNION  
#22382 A. F. of L.,  
(Union)

By .....  
President.

By R. M. TOMSON,  
Secy.-Treas.

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Mr. Tobriner: May I ask leave to substitute for that a photostatic copy?

Trial Examiner Myers: Two copies, yes.

Mr. Tobriner: Two copies.

I ask the reporter to mark for identification this document, reading "This is to Certify AFL Cannery Workers Union No. 22382 hereby represents the majority of its employees in the Turlock plant of G. W. Hume Company are members of the union," with signatures attached.

(Thereupon the document above referred to was marked AFL Exhibit No. 4 for identification.)[344]

(Testimony of Wesley King.)

Mr. Agee: What is the date of that?

Mr. Tobriner: The date of that is January, 1942.

Mr. Edises: January?

Mr. Tobriner: The 26th day of January, 1942.

Q. (By Mr. Tobriner): I will show you this document, marked AFL Exhibit No. 4, and ask you if you recognize the signature on that document?

A. I recognize the signature, Tomson.

Mr. Tobriner: I ask this be admitted as our Exhibit No. 4.

Trial Examiner Myers: Any objection?

Mr. Jennings: No objection.

Trial Examiner Myers: There being no objection, the paper is received in evidence, and I will ask the reporter to please mark it as AFL Exhibit No. 4.

(The document heretofore marked AFL Exhibit No. 4 for identification was received in evidence.)

#### AFL EXHIBIT No. 4

This to certify that A. F. of L. Cannery Workers Union, No. 22382, Stanislaus County, California, hereby represents that a majority of the employees in Turlock plant of G. W. Hume Company located at Turlock, California, are members of said union and individually for themselves and as a unit have designated said union as their representative for collective bargaining.

(Testimony of Wesley King.)

The said union hereby adopts that certain agreement made and entered into on the 26th day of January, 1942, by and between California Processors and Growers, Inc., for and on behalf of certain canning companies, and the Western Office of the American Federation of Labor, and National Council of Cannery and Process Workers for and on behalf of certain cannery workers unions, and promises to be bound thereby.

By authority of the Union.

CANNERY WORKERS UNION,  
STANISLAUS COUNTY, NO.  
22382,

By A. C. BURROUGHS,  
President.

By R. M. TOMSON.  
Secretary.

Dated: January, 1942.

This is to certify that upon the representation of Cannery Workers Union, Stanislaus County, No. 22382, that a majority of the employees in Turlock plant of G. W. Hume Company located at Turlock, California, are members of said union and have designated said union as their representative for collective bargaining, the undersigned hereby adopts that certain agreement made and entered into as of the 26th day of January, 1942, by and between California Processors and Growers, Inc., for and on behalf of certain canning companies, and the

(Testimony of Wesley King.)

Western Office of the American Federation of Labor and National Council of Cannery and Process Workers for and on behalf of certain cannery workers unions, and promises to be bound thereby.

G. W. HUME COMPANY,

By R. G. HUME,

Authorized Officer.

Dated: January, 1942.

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Mr. Tobriner: Will the reporter please mark, "Certify 22382 represents a majority of employees at Turlock plant of G. W. Hume Company," dated August 13, 1943, Exhibit No. 5 for identification?

(Thereupon the document above referred to was marked AFL Exhibit No. 5 for identification.)

Q. (By Mr. Tobriner): I show you our Exhibit No. 5 for identification, and ask you if you recognize the signature? [345]

A. I recognize the signature of Tomson.

Q. You have already testified Tomson was the Business Agent of 22382?

A. Secretary-Treasurer.

Q. Secretary-Treasurer of 22382?

A. Yes.

Mr. Tobriner: I ask that AFL Exhibit No. 5 be admitted into evidence.



(Testimony of Wesley King.)

Trial Examiner Myers: Any objection?

Mr. Jennings: None.

Trial Examiner Myers: There being no objection, the paper is received in evidence, and I will ask the reporter to please mark it as AFL Exhibit No. 5.

(The document heretofore marked AFL Exhibit No. 5 for identification was received in evidence.)

#### AFL EXHIBIT No. 5

This is to certify that A. F. of L. Cannery Workers Union, No. 22382, Stanislaus County, California, hereby represents that a majority of the employees in Turlock plant of G. W. Hume Company located at Turlock, Calif., are members of said union and individually for themselves and as a unit have designated said union as their representative for collective bargaining.

The said union hereby adopts that certain agreement made and entered into on the 10th day of July, 1943, by and between California Processors and Growers, Inc., for and on behalf of certain canning companies, and The American Federation of Labor, and California State Council of Cannery Unions for and on behalf of certain cannery workers unions, and promises to be bound thereby.

(Testimony of Wesley King.)

By authority of the Union.

CANNERY WORKERS UNION,  
STANISLAUS COUNTY, NO.  
22382,

By RALPH HAME,  
President.

By R. M. TOMSON,  
Secretary.

Dated: August 13, 1943.

This is to certify that upon the representation of Cannery Workers Union, Stanislaus County, No. 22382, that a majority of the employees in Turlock plant of G. W. Hume Company located at Turlock, Calif., are members of said union and have designated said union as their representative for collective bargaining, the undersigned hereby adopts that certain agreement made and entered into as of the 10th day of July, 1943, by and between California Processors and Growers, Inc., for and on behalf of certain canning companies and The American Federation of Labor and California State Council of Cannery Unions for and on behalf of certain cannery workers unions, and promises to be bound thereby.

G. W. HUME COMPANY,  
By R. G. HUME,  
Authorized Officer.

Dated: September, 1943.

(Testimony of Wesley King.)

(Testimony of Wesley King.)

Mr. Tobriner: May I ask for these last two exhibits the same permission the Trial Examiner gave us with respect to the prior one, that they may be withdrawn and that we may make duplicates?

Trial Examiner Myers: You may substitute copies in lieu of the originals.

Mr. Tobriner: Will you please mark this for identification as Exhibit No. 6, AFL?

It is entitled "Memorandum of Agreement made and entered into this 25th day of March, 1946, by and between G. W. Hume Company and Cannery Workers Local 22382," with various other names after it.

(Thereupon the document above referred to was marked AFL Exhibit No. 6 for identification.)

Mr. Jennings: Mr. Examiner, that is merely the original of Board's Exhibit 8.

Mr. Tobriner: I still want it in.

Trial Examiner Myers: What is the purpose of having it go in?

Mr. Tobriner: The purpose of this, Mr. Trial Examiner, is to show the seal on this original copy, that is not on the other.

Q. (By Mr. Tobriner): I show you this exhibit, No. 6, and I ask you if you know the signature of H. C. Torreano.           A. Yes, I do.

Q. What is his position?

(Testimony of Wesley King.)

A. He is Senior Business Representative of Local Union 22382.

Q. Is this his signature?

Trial Examiner Myers: What was his position at the time that paper is supposed to have been signed?

The Witness: Senior Representative.

A. Yes, that is his signature.

Q. I call to your attention that this Memorandum of Agreement reads, "entered into this 25th day of March, 1946, by and between G. W. Hume Co. located at Turlock, California, hereinafter referred to as Employer, California State Council of Cannery Unions, AF of L, and Cannery Workers Union, Local 22382, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, AF of L, hereinafter referred to as the Union."

Is there such an organization as Local 22382, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers?

A. There is not.

Q. Will you explain to me, then, how it is that it appears in this document?

Mr. Jennings: Mr. Examiner, is this an effort to controvert the contract? The contract speaks for itself.

Trial Examiner Myers: You have not laid any foundation for this man's knowledge.

Mr. Tobriner: He is the Business Agent of 22382.

Trial Examiner Myers: You are asking him

(Testimony of Wesley King.)

something about some other union. Does he know anything about the Teamsters?

Mr. Tobriner: I am going to ask him.

Q. (By Mr. Tobriner): Is 22382 affiliated with the International Brotherhood of Teamsters?

A. No.

Q. How does it occur, then, that that is in the paper?

A. These Memorandum of Agreements were all mimeographed in the Oakland Office for the Council of Cannery Unions, and this must be a typographical error by the girl that done the mimeographing. [348]

Q. Are there some organizations that are affiliated with the International Brotherhood of Teamsters? A. Yes.

Q. I ask you to check the seal on this original document. Will you read that into the record?

A. "Cannery Workers Union No. 22382, Modesto, California." In the center of the seal it is, "American Federation of Labor."

Trial Examiner Myers: Did you put that seal on the paper?

The Witness: The girl in the office probably put it on. She is in charge of the sealing.

Trial Examiner Myers: Did you see her do it?

The Witness: Pardon?

Trial Examiner Myers: Did you see her do it?

The Witness: That is one of her duties. I did not see her do it.

(Testimony of Wesley King.)

Trial Examiner Myers: Do you know when it was put on, or by whom?

(No response.)

Trial Examiner Myers: You do not know when that was put on, or by whom, isn't that right?

The Witness: I could not give you a definite answer.

Q. (By Mr. Tobriner): Do you know when Mr. Torreano signed it? [349]

A. Yes, I know when he signed it. He signed it on the 25th day of March, because I came to Modesto and got it. I took it back down for his signature at the time he and Mr. Hume entered into an agreement.

Q. Do you know of any organization known as Local 22382, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers operating in this area? A. I do.

Q. Is Local 22382 operating under the constitution and by-laws which I now show you as AFL Exhibit No. 2 A. It is.

Q. Do those by-laws provide for any affiliation with the International Brotherhood of Teamsters?

A. No.

Mr. Tobriner: I ask this now be introduced as our exhibit No. 6, next in order.

Trial Examiner Myers: Any objection?

Mr. Edises: No objection.

Trial Examiner Myers: There being no objection, the paper is received in evidence, and I will

(Testimony of Wesley King.)

ask the reporter to please mark it as AFL Exhibit No. 6.

(The document heretofore marked AFL Exhibit No. 6 for identification was received in evidence.)

Q. (By Mr. Tobriner): Mr. King, during the time that you were acting as Business Agent for 22382, did you ever have occasion to visit the Hume plant? A. Yes.

Q. You did? What was the period that you acted in that capacity?

A. The Hume plant was on my route from July, 1943, until the following spring. I do not remember just what month we changed.

Q. How often did you visit the plant, approximately? A. Once to three times a week.

Q. What did you do when you went there?

A. Well, contacted the different stewards we had in the plant to pick up any grievances they might not have been able to settle in the plant, took them up with Management. About once a month we had a book check at the door of the cannery when the people went to work of a morning, to see if they were all dues-paying members.

Q. Did you ever check the employees to see whether or not they were paid up in their dues?

A. About once a month, during the operating season, the months they were operating.

Q. What did you do if you found anyone who was not paid up?

(Testimony of Wesley King.)

A. We immediately called the attention of the company officials there to the fact that they were not paid up, and if they refused to pay up, they were notified by the company—— [351]

Mr. Jennings: Object to that, Mr. Examiner, as obviously outside the knowledge of this witness, not responsive to the question.

Trial Examiner Myers: Move to strike?

Mr. Jennings: Move to strike it out.

Trial Examiner Myers: Strike it out, the whole answer. Read the question to the witness.

(The question was read.)

A. I notified them that they must pay their dues into the union if they intended working there. If they refused to do so, I notified the company.

Q. When the company was notified, what happened?

Mr. Jennings: Object to that as outside the witness' knowledge; no foundation laid.

Trial Examiner Myers: Overruled.

First of all, did you ever notify the company of any employee who was delinquent in his payment of dues?

The Witness: Yes, two or three times I did.

Trial Examiner Myers: Who did you notify?

The Witness: One time Mr. Fordham, and the rest of the time Mr. Galloti, or whatever his name is.

Trial Examiner Myers: When did this take place?



(Testimony of Wesley King.)

The Witness: During that period that I—that was one of my plants as Business Agent.

Trial Examiner Myers: Was it this year or last year? [352]

The Witness: During the summer of 1943 and the spring of 1944.

Trial Examiner Myers: Can you fix it any better than that?

The Witness: It probably would have been in August or September, in the summer, and then the spinach run in the fall and the spinach run again in the spring.

Trial Examiner Myers: Do you know when you took the matter up with Mr. Fordham?

The Witness: It was in the peach season, '43.

Trial Examiner Myers: Who was the employee involved?

The Witness: I do not remember his name. I just remember it was a new employee there.

Trial Examiner Myers: What happened when you told Mr. Fordham that the man was not in good standing?

The Witness: I told him the man refused to pay his union dues, and that the union requested his dismissal.

Trial Examiner Myers: Was it a new employee?

The Witness: Yes.

Trial Examiner Myers: Then what happened?

The Witness: Mr. Fordham notified him to go to the office and get his **check**.

(Testimony of Wesley King.)

Trial Examiner Myers: And was the man discharged?

The Witness: He was discharged.

Trial Examiner Myers: What about the other cases? Were they new employees? [353]

The Witness: They were new employees. If you will allow me, I would like to explain about new employees.

Trial Examiner Myers: Go ahead.

The Witness: New employees at that time, we were collecting cash. There wasn't any check-off and they had ten days to complete their application. They signed an application upon going to work, and if it was not completed in ten days, they were notified by the union that they must complete it, and then if they did not complete it, the company was notified. Then these two particular instances, that is what was done in them.

Trial Examiner Myers: They were new employees, and they did not pay the balance, and you told the company about it, and the company discharged them, is that correct?

The Witness: That is correct.

Trial Examiner Myers: Go ahead.

Q. (By Mr. Tobriner): Were there any other instances when you went out to the company and found dues had not been paid in full?

A. Not on regular work.

Q. Were there any other instances in which you went out and found that employees had not paid

(Testimony of Wesley King.)

their dues, and you notified the company, and the employees were retained on the payroll?

A. No.

Mr. Tobriner: That is all.

Trial Examiner Myers: Any questions?

Mr. Edises: I have a few questions, Mr. Examiner.

Mr. Jennings: I have none.

Cross-Examination

By Mr. Edises:

Q. What is your present position, Mr. King?

A. Business Representative of Local Union 22382, AFL.

Q. Is that an elective office? A. No.

Q. How did you get that position?

A. I have the credentials in my pocket, if I may present them, to show how I got the position.

Trial Examiner Myers: He is not doubting it. He just wants to know how you got the job.

A. (Continuing): Daniel Flanigan, Director of the Western Organization, appointed me to that job.

Q. When was that? A. June 1, 1945.

Q. What was your job before that?

A. I was——

Mr. Tobriner: Objected to.

Trial Examiner Myers: Overruled.

A. I was unemployed.

Q. Where were you living during this period of unemployment?

(Testimony of Wesley King.)

Mr. Tobriner: Objected to on the ground that where he was employed before is immaterial.

Trial Examiner Myers: Overruled. [355]

He did not ask him where he was employed. He said, "What were you doing before that?" and the witness said he was unemployed.

How long were you unemployed, Mr. King?

The Witness: October to June 12; October, 1944, until June, 1945.

Q. (By Mr. Edises): What was your address during that period?

Mr. Tobriner: Objected to.

Trial Examiner Myers: Overruled.

A. 313 Vine Street.

Q. Where? A. Modesto.

Q. What work did you do before that time of unemployment?

A. I worked for the Cannery Workers Union, 22382.

Q. In what capacity?

A. Business Agent.

Q. With what labor organization, if any, is Local 22382 now affiliated?

A. The American Federation of Labor.

Q. What kind of a union is it?

A. Federal labor union.

Q. You, I take it, are employed on a salary?

A. That is correct.

Q. Who pays your salary?

Mr. Tobriner: Objected to. It is not the purpose of the Board nor this investigation to deter-

(Testimony of Wesley King.)

mine the internal affairs of this union, who pays him or how much it is.

Trial Examiner Myers: Overruled. Who pays you?

The Witness: What do you mean by who pays me?

Trial Examiner Myers: Do you get a check?

The Witness: You mean, Flanigan? It is paid by Mr. Flanigan.

Q. (By Mr. Edises): Who is Mr. Flanigan?

Mr. Tobriner: He has testified to that already. It is in the record.

Trial Examiner Myers: Overruled.

A. He is Supervisor of Local Union 22382.

Q. What is his union affiliation? A. AFL.

Q. Mr. Flanigan is Western Representative of the International Brotherhood of Teamsters, is he not?

A. I would have to refuse to answer that, because I could not answer you correctly.

Q. The fact is, Mr. Flanigan is an official of the AFL Teamsters Union, is he not?

Mr. Tobriner: Objected to.

Trial Examiner Myers: Overruled. [357]

Mr. Tobriner: First of all, he is arguing with the witness, Mr. Trial Examiner. He asked him twice now.

Trial Examiner Myers: Overruled.

A. The only position that I know that Mr. Flanigan has is Director of the Western Organiza-

(Testimony of Wesley King.)

tion for the eleven western states for the American Federation of Labor.

Q. What connection, if any, does Mr. Flanigan have with the Teamsters Union?

A. I told you I could not answer you honestly. He might carry a card in the Teamsters, or something like that.

Q. Have you any card or paper or check stub or anything which would show the name of the outfit that pays you? A. No, I do not think I have.

Q. Look through your cards, will you please?

Mr. Tobriner: I object to Mr. Edises peering over the witness' shoulder at his personal effects. After all!

Trial Examiner Myers: Just step back, please.

Mr. Tobriner: There are certain privacies.

Q. (By Mr. Edises): Did you find it?

A. This is the only thing I have. (Exhibiting document to counsel.)

Trial Examiner Myers: How are you paid? By check?

The Witness: Yes, sir.

Trial Examiner Myers: Whose check did you say? Flanigan's check?

The Witness: Flanigan signs the check.

Q. (By Mr. Edises): Where is the office of Local 22382 located?

A. 329 South 99 Highway, Modesto.

Q. Who is your immediate superior?

A. H. C. Torreano.

Q. What is Mr. Torreano's job?

(Testimony of Wesley King.)

A. Senior Business Representative of Local 22382.

Q. Who is Mr. Torreano's superior?

A. Mr. Flanigan.

Q. Do you know a Mr. Einar Mohn?

A. Yes, sir.

Q. What is his position?

Mr. Tobriner: Stipulated that he is an International Representative of the International Brotherhood of Teamsters.

Mr. Edises: I will accept the stipulation.

Mr. Jennings: So stipulated.

Q. (By Mr. Edises): What connection, if any, does Mr. Mohn have with Local 22382?

A. Not any, that I know of.

Q. Do you have contact with Mr. Mohn in the course of your duties? A. I do not.

Q. When did you last see Mr. Mohn? [359]

A. I believe in Sacramento in—if I am wrong about the month, it is just a mistake. I do not remember. I believe it was in December that we had a joint conference of canneries, setting up the Western Council of Cannery Unions.

Q. Do you know a Mr. Dave Beck?

A. I have never met the man personally, no. I have heard of him.

Trial Examiner Myers: You have heard of him, have you not?

The Witness: I say, I have heard of him, but I have never met him personally.

(Testimony of Wesley King.)

Q. (By Mr. Edises): Is there a Teamsters' organization, or is there a Truckdrivers organization in Modesto? A. Yes.

Q. What is the name of that organization?

A. I think it is Teamsters, Chauffeurs, Warehousemen and Helpers Local Union No. 386.

Q. Local Union No. 386?

A. I believe that is correct.

Q. Who are the officials of that union?

Mr. Tobriner: Stipulate that Wendell Kiser is the—I know their names, but I do not know their official positions. I can give you their names, if that is what you want. Mr. Kiser is Secretary.

Q. (By Mr. Edises): Can you explain how it happens, Mr. King, that according to your testimony, Local 22382 is not an affiliate of the Teamsters, whereas various other of the AFL cannery locals are?

A. Well, I can tell you what I have heard, but I have never been to one of the meetings.

Q. You are an official. Now tell me your understanding as an official of that fact.

A. That they had meetings in those different local unions and voted to transfer from the Federal Labor Union and affiliates to the Teamsters International.

Q. Have you received any financial assistance from the Teamsters?

Mr. Tobriner: Objected to on the ground that that goes into the internal workings and affairs of



(Testimony of Wesley King.)

the union, and has no bearing on this particular situation.

Trial Examiner Myers: Overruled.

When you say "you," you mean whom?

Mr. Edises: The union, 22382.

Trial Examiner Myers: Overruled.

A. I am not the Secretary-Treasurer. I am just a Business Agent. I would not know if there had been.

Q. You stated that Mr. Torreano is an official of 22382? A. That is correct.

Q. Do you know any other job that he has?

A. No, I do not.

Q. Did you ever hear of an organization known as "Cannery Warehousemen, Food Processors, Drivers and Helpers Local Union No. 748?" [361]

A. That is correct.

Q. What is that organization?

A. That is a cannery workers organization.

Q. What is its jurisdiction?

A. Stanislaus, Merced Counties.

Q. Does Mr. Torreano have anything to do with that organization?

Mr. Tobriner: Stipulated that he does have.

A. Yes, he does have. It is a Receivership Charter.

Q. That organization is affiliated with the International Brotherhood of Teamsters, is it not?

Mr. Tobriner: So stipulated.

Trial Examiner Myers: Let the witness testify, will you please?

(Testimony of Wesley King.)

Q. Is it, Mr. King? A. That is right.

Q. Do you have any connection with any other labor organization besides 22382?

A. What do you mean by "connection?"

Q. Member or officer.

A. Officer of another organization? No, I am not an officer.

Q. Are you connected in any way with any other labor organization?

A. I do a certain amount of Business Agent work for 748.

Q. That is the Teamsters Local?

A. That is a cannery workers union.

Q. Affiliated with the Teamsters?

A. That is correct.

Q. What work do you do for that Teamsters Local?

A. Similar work, or exactly the same work as the Cannery Union, 748.

Q. Is 22382 paying per capita tax to the American Federation of Labor?

A. I could not answer that.

Q. What did you say your position was with the union? A. Business Representative.

Q. Who would know the answer to that?

A. Mr. Flanigan, I imagine. He is Supervisor.

Q. Where does Mr. Flanigan hold forth? Where does he hang out?

Trial Examiner Myers: You mean, where is his office?

Q. Where are his offices?

(Testimony of Wesley King.)

A. I believe they are in the Golden Gate Building in San Francisco.

Trial Examiner Myers: On the letterhead of the Cannery Workers' Union, his address is 606 Tenth Street, Modesto. Isn't he ever there?

The Witness: No. That office has been moved out on the highway. He was there at that office at that time. I can give you the correct address of that office, if you want it, Mr. Flanigan's office. [363]

Q. (By Mr. Edises): In San Francisco?

A. Yes.

Q. No. All I am interested in knowing is whether he is in Modesto. You say his office is in San Francisco?

A. 700 Golden Gate Building.

Q. Who receives the dues that are obtained from the members of 22382?

A. They are made out to the local union.

Q. What happens to them after that, after they are received?

A. Well, I imagine they are banked.

Q. Who does it?

A. I told you I had no connection with the money or the Secretary-Treasurer's job whatever. I am just a Business Agent working in the field, so I could not give you a definite answer on it.

Q. Does Mr. Flanigan come down and personally collect those dues?

A. I don't think there are any dues personally collected. They are all mailed in by check, on the check-off.

(Testimony of Wesley King.)

Q. To whom is the check sent?

A. Cannery Workers' Union.

Q. Here in Modesto? A. That is correct.

Q. And you and Mr. Torreano are the local officials, are you not, of that union?

A. No. There is Mr. Torreano, myself, and Herb Carmen.

Q. Who handles the financial matters?

A. Mr. Torreano handles all the office work.

Q. Would Mr. Torreano know whether any per capita dues had been paid to the American Federation of Labor? A. I cannot answer.

Mr. Tobriner: Objected to.

Trial Examiner Myers: If he knows. He might know.

The Witness: I said I could not answer.

Trial Examiner Myers: Do you know?

The Witness: No. I said I could not answer that, because I do not know.

Trial Examiner Myers: Doesn't the constitution provide for per capita tax?

Mr. Edises: The constitution I believe provides for per capita tax, Mr. Examiner, but I would be very much interested to find out just what has happened in that regard.

Mr. Tobriner: I can understand how counsel might be interested in our internal history, but I do not think——

Trial Examiner Myers: You know why he wants to know, don't you, because you deny that you have

(Testimony of Wesley King.)

any connection with the Teamsters, and he wants to show that you have.

Mr. Edises: I submit that we certainly are entitled to check into this matter, in view of that very peculiar contract which has been offered in evidence. [365]

Trial Examiner Myers: Go ahead.

Q. (By Mr. Edises): Mr. King, have you ever been convicted of a felony? A. Yes.

Mr. Tobriner: Object.

Q. The answer is "Yes." Will you state the circumstances? A. I don't think I would.

Trial Examiner Myers: What was the answer?

Mr. Edises: The answer was yes, but he refuses to state the circumstances.

Mr. Tobriner: Object. I do not believe he has a right to ask him that question.

Mr. Edises: I have a right to test the credibility of the witness by asking if he has been convicted of a felony.

Mr. Tobriner: You can ask that, but not the circumstances.

Mr. Edises: I have a right to inquire as to the kind of felony he was convicted of.

Mr. Tobriner: Object.

Mr. Edises: I submit I have a right to ask.

Trial Examiner Myers: Will you please go ahead and stop this discussion between the two of you?

Q. (By Mr. Edises): What were you convicted for, and when? A. I refuse to answer.

(Testimony of Wesley King.)

Mr. Edises: I ask that the witness be instructed to answer.

Mr. Tobriner: Object to the question.

Trial Examiner Myers: I will direct him to answer. Overrule the objection.

The Witness: What was that?

Mr. Edises: You have been directed to answer.

The Witness: I still refuse to answer.

Q. (By Mr. Edises): Are you on probation at the present time? A. I am.

Mr. Tobriner: Object.

Trial Examiner Myers: Overruled.

Q. (By Mr. Edises): Do you receive a pay check in connection with your work as Business Representative of Teamsters Union 748?

A. I receive a check from the Cannery Workers Union, 748.

Q. That is affiliated with the Teamsters, is it not? A. That is correct.

Q. Do you receive any other pay check?

Mr. Tobriner: The question has been asked and answered now a number of times. Object.

Trial Examiner Myers: Overruled.

A. That would be the expense account. I have an expense account, but no other checks.

Mr. Edises: Will you find the testimony of the witness about ten minutes ago, where I was asking him about his pay check?

Trial Examiner Myers: Off the record. [367]

(Discussion off the record.)

Trial Examiner Myers: On the record.

(Testimony of Wesley King.)

Q. (By Mr. Edises): Mr. King, in what capacity does Mr. Flanigan sign your pay check?

A. Supervisor of the local union, I believe.

Q. Local 22382? A. Yes.

Q. Does he sign any pay checks as a Teamsters official? A. No.

Q. In other words, you receive only one pay check, and that is as a Teamster representative?

A. As a Cannery Workers representative.

Trial Examiner Myers: What is the name of that union?

The Witness: Cannery Workers' Union.

Q. (By Mr. Edises): No. 748?

A. I think the full name is the Cannery Workers, Food Processors, Warehousemen, Drivers and Helpers, No. 748, affiliated with the International Brotherhood of Teamsters.

Trial Examiner Myers: And that is the only check you get?

The Witness: That is right, outside of expense checks when I go out of town. 22382 or 748; it could be either one, according to the financial status of the union at that time.

Trial Examiner Myers: You mean if 22382 had enough money to pay your expenses, it would pay them? [368]

The Witness: That is right.

Trial Examiner Myers: And if it did not, then 748 would pay them?

The Witness: That is right, and it would be reimbursed by 22382.

Trial Examiner Myers: And your salary is paid by 748?

(Testimony of Wesley King.)

The Witness: Mine is.

Trial Examiner Myers: How long has 748 been paying your salary?

The Witness: I believe since December.

Trial Examiner Myers: '45?

The Witness: '45.

Trial Examiner Myers: Who paid it before that?

The Witness: 22382.

Mr. Edises: I have no further questions of this witness.

I would like to ask Mr. Tobriner if he will be kind enough to produce Mr. Torreano.

Mr. Tobriner: I do not know if I can produce Mr. Torreano. It is a very late moment to ask for that.

Mr. Edises: I would not have asked for it if it had not been for the testimony of your witness, Mr. King. Now I want to get things cleared up.

Mr. Tobriner: What testimony do you want? We will stipulate.

Mr. Edises: I want to clear up the status of this so-called "Federal Union".

Mr. Tobriner: We will make a statement on the record.

Mr. Edises: I do not care to accept any statement on the record. I want to ask the questions of Mr. Torreano.

Mr. Tobriner: As a matter of fact, Mr. Trial Examiner, the whole affairs of this union have been gone into at great length.

Mr. Jennings: Mr. Trial Examiner, that was in the Bereut-Richards case.



(Testimony of Wesley King.)

Trial Examiner Myers: That record is not before me.

Mr. Tobriner: I am asking for it to go in. There is no use in going through the whole thing all over again.

Mr. Edises: I object.

Trial Examiner Myers: What are you objecting to?

Mr. Tobriner: He wants me to get Mr. Torreano.

Trial Examiner Myers: And you cannot get him. All right. Let him pursue whatever remedy he has. Don't just say "I object". He has not said anything yet.

Does anyone want to ask Mr. King any further questions?

Mr. Tobriner: Just one question.

#### Redirect Examination

By Mr. Tobriner:

Q. You know all the Teamsters and AFL unions in this vicinity, do you not?

A. That is right.

Q. Is there any organization that is known as "Local 22382, [370] International Brotherhood of Teamsters"?

A. There is none.

Mr. Tobriner: That is all.

Trial Examiner Myers: You are excused, Mr. King. Thank you very much.

(Witness excused.)

Trial Examiner Myers: Have you any other witnesses you want to call, Mr. Tobriner?

Mr. Tobriner: No other witnesses.

Trial Examiner Myers: Has Mr. Fordham appeared yet?

Mr. Agee: He has not arrived.

Trial Examiner Myers: We will take a short recess, and I will allow counsel to figure out what they want to do, before we proceed further.

(Whereupon, a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Myers: Are you ready to proceed, gentlemen?

Mr. Jennings: Ready.

Mr. Agee: Ready.

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### F. D. FORDHAM

a witness called by and on behalf of the Respondents, G. W. Hume Company and California Processors & Growers, Inc., being first duly sworn, was examined and testified as follows:

#### Direct Examination

Trial Examiner Myers: What is your name, sir?

The Witness: F. D. Fordham.

Trial Examiner Myers: Will you please spell your last name for the record?

The Witness: F-o-r-d-h-a-m.

Trial Examiner Myers: Where do you live, Mr. Fordham?

The Witness: Turlock.

(Testimony of F. D. Fordham.)

Trial Examiner Myers: You may be seated, sir.

You may proceed, Mr. Agee.

Q. (By Mr. Agee): Are you employed by the Hume Company of Turlock?

A. Yes, sir.

Q. What is your position?

A. Factory Superintendent.

Q. Have you been Factory Superintendent since the year 1940, including 1940?

A. Yes, sir.

Q. Calling your attention to the morning of November 21st of 1945, were you on the job that day at the plant?

A. Yes, sir, I was.

Q. Were you summoned on that date by the watchman employed by the company?

A. Yes, sir.

Q. Can you recall at about what time that occurred?

A. Approximately 10:00 o'clock. [372]

Q. In the morning? A. Yes, sir.

Q. Where were you at the time your watchman called you?

A. I was in what we call the "cook room", the cannery, down in the factory.

Q. Where did you go immediately after being called by the watchman?

A. To the door, the door of the factory in front of the office where the help comes in.

Q. Did you see any persons gathered there?

A. Yes, sir.

(Testimony of F. D. Fordham.)

Q. Who were they, without reference to names? Were they employees?

A. Employees and—yes, and some of the union men.

Trial Examiner Myers: What union?

The Witness: 22382.

Q. (By Mr. Agee): Approximately how many employees were gathered there?

A. Oh, I would say about 40, 50, maybe. It is pretty hard to tell.

Q. Did you have a conversation with any of those employees at that time and place?

A. Yes, I did.

Q. Did any of those employees speak to you?

A. Yes, sir. [373]

Q. What were the names of the employees who spoke to you?

A. The only one that spoke to me was Heagle, Mr. Heagle.

Q. What did he say to you and what did you say to him?

A. He asked me if they could come in and go to work, and I told him not until they cleared with the union, meaning 22382.

Q. Was anything said by you as to what these men who had been gathered there should do? That is, did you say, "Stay," or "Go away," or what?

A. I told them to go away. That is, I told them to get off the property, that is what I told them, until they cleared with the union.

(Testimony of F. D. Fordham.)

Q. You mean by that, Local 22382, is that correct?      A. Yes, sir.

Q. Did you say anything on that occasion about the men being fired?      A. No, sir.

Q. Did you use the word "fired" at all?

A. No, sir.

Q. When you spoke to Mr. Heagle, did you speak in a voice loud enough to be heard by these gathered employees?

A. I expect I did. I expect I did, because they were all close together.

Mr. Agee: You may cross examine.

Trial Examiner Myers: Mr. Tobriner?

Mr. Tobriner: No questions.

Trial Examiner Myers: Mr. Jennings?

#### Cross-Examination

By Mr. Jennings:

Q. Did you tell the employees why they could not work, Mr. Fordham?

A. I simply told them they would have to clear with the union, that was all.

Q. Have you told us everything that you said?

A. So far as I can remember, I have.

Q. Do you remember anything else that you said?

A. No, I don't think I said anything else, because then they just left. That was all there was to say.

Q. You addressed yourself to this entire group of employees that were there?

(Testimony of F. D. Fordham.)

A. Yes. I was talking directly to Mr. Heagle, but of course the whole group were together. He was standing right with them.

Mr. Jennings: That is all.

Mr. Edises: No questions.

Mr. Agee: No further questions.

Trial Examiner Myers: Did you know an employee there by the name of Smith, John Smith?

The Witness: No, I cannot say that I did.

Trial Examiner Myers: You do not remember him?

The Witness: I don't know. There are a lot of the employees [375] that I don't know their names, anyway. I know their faces, but I am Superintendent, and the other foremen and foreladies know their names. I don't.

Trial Examiner Myers: You are excused, sir, unless somebody else has any further questions.

(No response.)

Trial Examiner Myers: Thank you very much, Mr. Fordham.

(Witness excused.)

Trial Examiner Myers: Do you rest, Mr. Agee?

Mr. Agee: Yes, we do.

Trial Examiner Myers: Have you any further witnesses you wish to call, Mr. Tobriner?

Mr. Tobriner: No.

Trial Examiner Myers: Mr. Edises, do you wish to call any witnesses?

Mr. Edises: No, we have no independent testimony to present.

Trial Examiner Myers: You have no evidence you wish to introduce, is that right?

Mr. Edises: No, other than to ask the Examiner whether he would have the authority to issue a subpoena.

Trial Examiner Myers: I have authority to issue subpoenas.

Mr. Edises: Then I wish to request a subpoena for Mr. Torreano of the Teamsters Union.

Trial Examiner Myers: I will issue the subpoena for Mr. [376] Torreano.

When do you want it returned?

Mr. Edises: This afternoon.

Trial Examiner Myers: Very well. We will take a recess, then, until I issue the subpoena for Mr. Torreano.

(Whereupon, Mr. Torreano entered the court room.)

Trial Examiner Myers: Do you want to call Mr. Torreano?

Mr. Edises: Yes.

Will you take the stand?

Mr. Tobriner: I would like a little recess, Mr. Examiner, if you please.

Mr. Edises: I want to ask that counsel be instructed not to confer with his witness, under the circumstances.

Mr. Tobriner: Mr. Trial Examiner, I think when a witness who was subpoenaed at two minutes to four walks into a room, he should have a chance to know what the entire matter is all about.

Trial Examiner Myers: You are not calling the witness, Mr. Tobriner.

Will you take the stand, Mr. Torreano?

Mr. Torreano: No. You can serve one on me, then.

Mr. Edises: You are going to walk out?

Trial Examiner Myers: Take the stand, Mr. Torreano. Raise your right hand.

Mr. Torreano: Let him serve a subpoena on me.

Trial Examiner Myers: Stay where you are, Mr. Torreano, and I will give you one.

Will you write out a subpoena, Mr. Jennings?

(Whereupon a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Myers: Are you ready to proceed, gentlemen?

Mr. Jennings: Yes.

Mr. Edises: Yes.

Mr. Examiner, prior to the recess, as you know, I had asked that Mr. Torreano be produced.

Trial Examiner Myers: Are you going to call him?

Mr. Edises: May I——

Trial Examiner Myers: No. I do not want anything on the record about it.

Mr. Edises: Mr. Examiner, I do wish to get on the record the fact——

Mr. Tobriner: I want to object on the record, too, on the facts, Mr. Examiner, please.

Trial Examiner Myers: All right. Go ahead.



Mr. Edises: The fact that after the request to produce Mr. Torreano was rejected by counsel, Mr. Torreano walked into the room, and at that time he was asked by me to take the witness stand.

Mr. Tobriner: I think we are getting a lot of ex parte statements here. If Mr. Edises wants to testify, let him take [378] the stand.

Trial Examiner Myers: You can give your version of what took place, and he can give his. Let us go on.

Mr. Edises: Mr. Torreano was likewise asked by the Trial Examiner to take the witness stand and declined, stating that if we wanted him, we could serve him with a subpoena. The attorney for the FTA then asked for the issuance of a subpoena, which was granted by the Trial Examiner, and we then took the subpoena out and tried to find Mr. Torreano. We have been unable to find him, he evidently being a little too fast for us.

Mr. Tobriner: Let us have that stricken.

Trial Examiner Myers: All right. Never mind that.

Mr. Edises: The subpoena is now in the office of the Sheriff, with a request on our part that Mr. Torreano be found and served. However, I have no reason to doubt that we will be able to produce Mr. Torreano in time for the continuance of the session this afternoon. I feel that in the present state of the record, probably there will be no special urgency in our insisting that the hearing be continued for tomorrow. I am particularly ready to take that position because of the fact that I am urgently required to be in San Francisco tomorrow myself.

So, under the circumstances, we shall not insist that Mr. Torreano be produced, and you may deem this a withdrawal of our request for a subpoena.

Trial Examiner Myers: All right. Then will you withdraw the subpoena from the Sheriff?

Mr. Edises: Correct.

Mr. Tobriner: So that the record might be clear, let it show that I would be glad to produce Mr. Torreano if I had only had sufficient notice in advance, in fact, would have produced him myself if I could have gotten him at the time. But, when he entered the room he was confused by all the things that happened here so quickly, and had I the opportunity to tell him that he had been subpoenaed, he would have been able to be here to testify, but counsel did not afford me that opportunity.

Trial Examiner Myers: Have you anything further you wish to introduce, Mr. Edises?

Mr. Edises: No, we have nothing further.

Trial Examiner Myers: Any rebuttal. Mr. Jennings?

Mr. Jennings: No rebuttal, no other witnesses, no other evidence.

Trial Examiner Myers: Mr. Agee, have you any other witnesses you wish to call?

Mr. Agee: We have not.

Trial Examiner Myers: Or any other evidence you wish to introduce?

Mr. Agee: We have not.

Trial Examiner Myers: Mr. Tobriner? [380]

Mr. Tobriner: We have not.

Trial Examiner Myers: Have you any other witnesses you wish to call.

Mr. Tobriner: I have not.

Trial Examiner Myers: Or any other evidence you wish to introduce?

Mr. Tobriner: I have not.

Trial Examiner Myers: Will you argue orally, Mr. Jennings? Just confine yourself to your contentions.

Mr. Jennings: Before that, I would like to move to amend the Complaint to conform with the proof as to the names of employees, spelling of names, dates, and such minor matters. There is no intention to vary the substance of the Complaint.

Trial Examiner Myers: Any objection?

Mr. Agee: No objection.

Trial Examiner Myers: Motion granted, without objection.

Mr. Tobriner: I have no objection to it.

Mr. Trial Examiner, are we going to argue orally and also submit briefs?

Trial Examiner Myers: You may do either, or both.

Mr. Tobriner: I am willing to submit it on briefs.

Trial Examiner Myers: You may submit a brief.

Mr. Tobriner: I mean, if everyone else is.

Trial Examiner Myers: I just want to get your contentions.

Argument on Behalf of the National Labor  
Relations Board

Mr. Jennings: I merely state as my contention, Mr. Examiner, that there are in this case actually only two issues.

First of all, with respect to 22382, whether or not this contract required employees to maintain membership in the union. It is my contention that obviously the contract does not so require, and I should like to cite the Pittsburg Plate Glass Company case, decided last month by the Board, in which it appeared that there had been a history of cooperation for a number of years between the company and the union, in an effort to get employees to become members of the union. The Board said that was not sufficient. If you are going to sign a closed shop, you have to sign a closed shop agreement.

The parties here did not sign a closed shop contract. Therefore they had no right under the law to discharge the employees who failed to maintain their membership in the union.

I should like to point out to the Examiner that every one of those employees cleared through the union before going to work.

The second question in the case is whether or not the contract signed on March 25, 1946, is a lawful contract. For at least three reasons it is not.

In the first place, that contract purports to cover only the employees of the Hume Company. The Board, in the Bercut-Richards case, 20-R-1414, found at the request of the California Processors &

Growers, Inc., that the appropriate unit was all the members of C. P. & G., which includes the Hume Company. The contract therefore obviously does not cover an appropriate unit, and is illegal for that reason.

It is illegal for the further reason that the contract was made at the time the question of representation was made before the Board. I need cite to the Trial Examiner only the cases referred to by the Board in the Supplemental Decision of February 15th.

Finally, the contract is invalid because it is clear from the record in this case that the contracting union or the union which purported to be the contracting union does not exist.

I should like to say further very briefly with respect to the 8 (1) allegation of the Complaint, that in requiring employees to sign dues check-offs, in urging employees to sign those check-offs and become members of the union, the Respondent clearly violated Section 8 (1) of the Act, because there is nothing in the contract which permitted the Respondent to do those things.

The 8 (1) I think is clear, Mr. Examiner. I need not state it any further.

Trial Examiner Myers: Mr. Agee?

Argument on Behalf of the Respondents G. W. Hume Company and California Processors and Growers, Inc.

Mr. Agee: It is our position, Mr. Examiner, that the election held during the month of October, [383]

1945, having been declared to be a void election, its legal effect has been completely erased and wiped out, and the parties stand here the same as they would had no such election ever been called or held.

It is our contention that the bargaining agent that we had dealt with for the years 1940 to 1944, inclusive, and that until a new bargaining agent was certified by the Board, that it was our legal duty to negotiate with and deal with the bargaining agent that we had dealt with in all of the previous years.

It is our contention that the contract covering the period from March 1, 1945 to March 1, 1946, was in existence and was effective and valid during all of that period of time, and that we were required to live up to the terms and provisions of that contract.

It is our position that although the rule of law is that a contract speaks for itself and the matter of the legal effect or interpretation of the contract is ordinarily a question for the court to determine, as a matter of law, that where the parties to a contract, by a series of acts had interpreted it, that that evidence is admissible and material to interpret the terms and provisions of the contract.

It is our position that we were enforcing and carrying out a closed shop contract from March 1, 1945 to March 1, 1946, [384] and that all of the alleged acts committed during that period by the company were consistent with the contract, as we interpret it, and that nothing was done in violation of law or the contract by the company.

It is our contention that on March 1, 1946, when the previous contract expired, that it was not only our privilege but it was our duty to continue to negotiate with this bargaining agent that we have negotiated with in the past, and that the contract of March 25, 1946 was signed up under those circumstances.

It is our further contention that the question of public necessity enters into this entire case, and that we were faced with an absolute work stoppage which we demonstrated, and which is not disputed, if we did not make a contract with the union that we did deal with.

It is our contention that these crops would have lain out in the field and spoiled. They would not have been processed or canned. They would have been lost at the time of a national emergency, as far as that goes, a national emergency in the food situation, and without a decision that was binding in legal effect, the cannery was put in the position of acting in the manner that they thought best. They have been advised in this matter. They followed the advice of their advisors.

Trial Examiner Myers: Mr. Tobriner?

Argument on Behalf of the Respondents,  
International Brotherhood of Teamsters, et al.

Mr. Tobriner: The case resolves itself into two issues, fundamentally issues of law, not of fact.

The first issue involves these alleged unfair practices in discharging or in letting go certain em-

ployees. There is no fundamental argument on the facts on that issue. There is no doubt the employees were let go.

The question is whether or not the employer was justified in so doing. We do not have to refer to any cases. We refer to the decision of the National Labor Relations Board in this case.

There are two decisions. The first decision is the decision rendered by the National Labor Relations Board in its direction of elections and decisions and order issued on October 12, 1945, on page 3. I will read the entire paragraph.

Trial Examiner Myers: Which paragraph?

Mr. Tobriner: Page 3, the second paragraph.

Trial Examiner Myers: You mean the AFL?

Mr. Tobriner: That is right, yes.

Trial Examiner Myers: You do not have to read it. Tell me the contention.

Mr. Tobriner: They find here that there is a valid contract, and that the certification of representatives which may issue as a result shall be solely for the purpose of designating a bargaining representative to negotiate a new contract to become effective upon the expiration of the existing contract, which, if I read English, means existing contract or valid contract.

The contract that existed here was a contract which operated up to March 1, 1946. Hence the discharges which occurred here operated or occurred under the existing contract sanctioned by the National Labor Relations Board. But, the sanction of the National Labor Relations Board does



not depend merely on the second paragraph of its Direction of Elections. The Board took occasion to reiterate its conclusion, and the reiteration occurs in the second decision of the National Labor Relations Board. That is called "Supplemental Decision and Order." The date of that is February 15, 1946. That is a month and a half ago.

There again the Board took occasion to remark about this contract under which this employer agreed with this union, and that is referred to by the Board in very precise language. There is no occasion for any question as to it.

On page 5 of the decision, at the bottom of page 5 just before the footnote:

"In this state of the record," says the Board, "No legal effect may be given the closed-shop provision contained in the current collective bargaining agreements after their expiration date; . . ."

Which certainly means again, if I can understand the language (or perhaps I cannot) it seems to me to say that in this state of the record legal effect may be given the closed shop provision contained in the current collective agreements up to their expiration date. If that is not exactly what the Board has ruled on this very contract now before this Trial Examiner, I simply cannot understand the language. But, of course, it may be double talk. It is possible that the National Labor Relations Board is going to take the position that the employer is bound by a closed shop contract which he must live up to up to the expiration date. It is also bound by a valid contract which is supposed

to subsist until an election, and yet, by being bound by the contract under the order of the National Labor Relations Board, in some manner also is liable to a penalty under the National Labor Relations Act to be for the performance of the order of the National Labor Relations Board.

The situation and position of the Regional Office of this National Labor Relations Board under those two orders, to my mind is beyond understanding. How it can be expected that an employer is bound by these decisions upon which the Regional Office relies and certainly is bound itself, and yet at the same time is able to bring an unfair practice charge against the employer and collaterally affect the union by claiming that there is a violation of the Act in the performance of those contracts, I simply cannot understand. I think that this kind of procedure is unfair to the employer, because the employer is bound to recognize these decisions, so far as they go and as far as they are binding. [388]

Aside from the decisions themselves, the testimony has shown that for years the contract between the union, 228382, and the employer was regarded and was carried out as a union shop or closed shop contract; to use the Board's language, "closed shop." If there was any doubt as to the meaning of the contract, then what the parties did under it would afford a very strong clue to its purport.

I cite to the Trial Examiner the decisions in the State of California which obtain under the headnote of California jurisprudence that, "When the mean-

ing of the language of a contract is doubtful, the acts of the parties performed under it afford one of the most reliable clues of their intent."

Hill v. MacKay, 94 Cal. 5. Rockwell v. Light, 6 Cal. App. 6563. Whitney v. Aronson, 21 Cal. App. 9.

All of these decisions buttress and support the ruling of the Board itself to the effect that this was a closed shop contract.

Moreover, if there was any question as to whether it was a closed shop contract, the contract provided its own procedure for the solution of that problem. If there was any doubt as to whether these employees should have been let go, there was a manner of bringing that grievance before an adjustment board. The procedure was undertaken. It was referred to the United States Conciliation Service. The Conciliation Service to date has not acted, but nevertheless the Board has held the contract is in effect, and if there is any question as to what the procedure should be, whether they should be discharged or not, then that was a grievance under the contract that surely should have been determined by the procedure of the contract itself. That arbitration procedure has not been exhausted. It is still pending, and certainly the pursuance of it by the employer and the union involved does not constitute any unfair labor practice.

There has been some question raised as to whether 22382 is the same union. No testimony was adduced to that effect. Certainly 22382, through the life of the old contract, continued to exist. There is no statement to the contrary, no showing to the

contrary. Consequently the old contract, as found by the Board, continues, and indeed we have a ruling by the National Labor Relations Board as to the fact that that contract ran between the AFL, California Council of Cannery Unions and its constituent membership. That too was found by the Board in the Berent-Richards case.

A great deal of evidence was taken on this same question, and the resolution of that evidence and decision of the Board is a matter of record which has been introduced into the record into this case.

So, on all of those grounds we submit that the Regional Office, as far as the first charge, the unfair labor practices under 8(3) to our minds does not abide by the cases, does not abide by the decision of the National Labor Relations Board, and actually is immoral, because it holds the employer to be bound by a union shop contract, and at the same time attempts to exact penalties for the performance of the Board's own rulings.

Turning to the second question: the second question is as to whether this contract, made on March 25, 1946, is valid. The claim is made that that contract falls under 8(1), and cannot stand. The consummation of the contract is alleged to be an unfair labor practice and discriminatory.

Again I believe the Board has answered that question. If it was discriminatory for the employer to give a contract to the union with which he had always dealt, if there is some discrimination in the performance of that contract, there was the same discrimination under that contract prior to March 1st.

The Board already has ruled that that contract was a valid contract, and that the employer should perform it. Therefore, if there was anything discriminatory in the employer's performance of the contract or recognition of it, the Board has sanctioned such discrimination, because the Board has said that the contract was a valid contract, and there was no violation of the Act in its performance. Indeed, I am perfectly frank to admit that the AFL took the position that the election should not be held during the course of the contract. We think that is a very bad practice. We have said so many times to the National Labor Relations Board at Washington, in appearances before the Board.

However, the Board proceeded, despite our protests, to hold the election. At the same time it held the contract was valid. So, it holds that nothing discriminatory occurred by the coincidence of the question of representation, and an election and the granting of and performance of a collective bargaining contract simultaneously therewith.

How has the situation changed because a Board election was held? How does the contract which formerly was valid, according to the Board's own decision, now become invalid because a Board election took place? Indeed, if the Regional Office's position is correct here, the Board's decision is wrong. I should say, rather than the Board's decision, the opinion contained in the decision, because in the course of the opinion the Board says that it is proper for the employers "to recognize each one," that is, each of the unions, "as the representative of its members."

The Board therefore says it is not discriminatory for the employer to recognize one of the unions as the representative of its members, and in that event in no way violates the National Labor Relations Act. If that is the case, where was there a violation of the Act on the part of this employer, when he recognized this union as the representative of his employees, even under the opinion of the Board, when this employer knew that the AFL had been the representative of its employees in the past, and still continued to be the representative of its employees. It knew that it was the representative of its particular plant, because, as the exhibits will show, in the past the practice had been that the individual plants signed a separate contract covering the particular plant, stating and certifying that a majority of its employees were members of the union involved. Here the AFL exhibits show for three successive contracts there is a certification by management and by the union that the majority of the employees in that particular unit belonged to the AFL. So, the argument made by Mr. Jennings that there was not an appropriate unit does not hold.

In the past there has always been a contract entered into for this particular unit, and this particular unit again was covered by the contract made after March 1, 1946.

The final argument, that the union is no longer in existence, has not been borne out by the evidence. Over and again we have testimony in the record

that 22382 continues to exist. There is no showing that it does not continue to exist. The workers belong to 22382. The management dealt with 22382. The constitution and by-laws of 22382 are in evidence, and, while it is true that there are Teamster unions, that is, Teamster cannery unions, that by no means shows that there could not be 22382, a cannery union, which exists at the same time as the Teamsters union. [393]

I find nothing difficult in the fact that there is more than one union in the field. It would certainly be strange if that were something novel.

So, we submit on the second point, that the contract is valid because it is in accordance even with the opinion of the Board, that the Board has already ruled that it is not discriminatory for the employer to give a contract; there is nothing to show that it was discriminatory. The cases hold—and I will cite these in our brief, so I will not take the time of the Trial Examiner now—but, there are quite a few cases, Mr. Trial Examiner, as you know, which hold that once a bargaining agency is established, the employer is bound to deal with that bargaining agency unless and until a new agency is certified in its place. No certification has occurred here. This agency is still the bargaining agent for the employees, and until such time as an election is validly held, it is the organization that continues to represent these employees.

Thank you.

Trial Examiner Myers: Mr. Edises?

Argument on Behalf of the Charging Union Food,  
Tobacco, Agricultural and Allied Workers of  
America, CIO

Mr. Edises: Taking up the last point made by Mr. Tobriner first, the Board has in certain cases stated that there is a presumption that the bargaining agency continues. The Examiner is probably aware that that contention was made in cases involving a refusal by an employer to bargain collectively with a union, that refusal resulting in a loss of the union's majority.

Trial Examiner Myers: Do not go into that line of argument. That is Botany Worsted, Medo Photo and Century-Oxford.

Mr. Edises: Botany Worsted, and so on.

So that I shall not waste the Examiner's time by further trying to answer that one.

Trial Examiner Myers: I do not say that Mr. Tobriner's contention is proper, but I mean the line that you are going into has nothing to do with the case.

Mr. Edises: I am not going to go into it any further for that very reason.

In connection with the law applicable to the situation here, I think that it might be well to remind ourselves that in effect the Board has already established the law of this case, and that is in its Supplemental Decision. It strikes me as a little bit funny to go into any elaborate discussion of other Board cases on different factual situations, when we have a situation here where a party to that



very proceeding has done the very thing which the Board has said, if done, would be a violation of the Act. [395]

On this argument about the union being the same organization and maintaining its representation, and so on, until a new agency has been determined, that argument rests on considerations of contract which have only very limited application in National Labor Relations Board proceedings. Here every contract has written into it the National Labor Relations Act, and the construction of that Act made by the agency which Congress empowered to interpret the Act. The Board has the power to determine itself during what time a bargaining agency shall continue, and it has held normally that it will permit it to continue for a reasonable time. In determining what is a reasonable time, the Board often has been guided by the terms set forth in the contract.

Here there was a contract. It ran until March 1, 1946. The Board decided that was a reasonable time, during which it would permit the agency to continue, but to say that the contract determines the law rather than the law determining the contract is ridiculous. The Board could have cut that contract off right then if it had wanted to, or it could have permitted any other reasonable time for the agency to continue.

It is inaccurate, however, to conclude, from the fact that the Board permitted the bargaining agency to remain in effect until March 1, 1946, that the

Board also sanctioned discrimination during that period. That is a distorted view of what the Board did. As a matter of fact, we do not have to rely on my statement. All we have to do is look at the Board's decision itself. It stated that, although the contract might continue until March 1, 1946, under the existing law, citing the Rutland Court case, any discharges resulting from activity in the election would not be justified, even under the present agreement. Of course, that is the utmost that they could possibly claim here, namely, that there were these discharges under an alleged closed shop agreement.

Of course, as Mr. Jennings points out, the evidence conclusively shows that there was no such agreement.

That is all.

Trial Examiner Myers: Anybody else?

Mr. Jennings: Just four things dealing with the discharges, the 8(3)s.

This contract, alleged to be a defense, covered one unit, the C. P. & G. unit. It has to be a closed shop contract in the entire unit, or it cannot be a closed shop at all. Mr. Agee seems to contend that the contract could be closed shop in one area and not in another. It must either be a closed shop or it is not a closed shop. It is clearly not a closed shop.

Secondly, duress is not a defense, and I will cite the *NLRB v. Star Publishing Company*, 97 Fed. 2d 465, Ninth Circuit.

Trial Examiner Myers: Why neglect my case, the National Board case?

Mr. Jennings: That was in another circuit.

Trial Examiner Myers: Second Circuit.

Mr. Jennings: The validity of the contract was not and could not be litigated in the representation case. The Board, for the purposes of deciding that case and directing an election, assumed the validity of the contract. That is what the decision precisely provides, and that is all it shows.

In the Supplemental Decision, the language referred to by Mr. Tobriner appears. The Board speaks of a closed shop contract. This was a preferential shop contract, often referred to in parlance as "closed shop" merely because it had some form of union preference. The evidence in this case—and this is the only case in which the question of whether or not it is a closed shop was or could be litigated—the evidence in this case shows clearly it was not a closed shop.

With respect to the arbitration section, 10(a) of the Act, which has heretofore been quoted by Mr. Edises, it makes it clear that this Board has the sole and exclusive jurisdiction to determine the matters that are at issue here, and cannot be arbitrated.

Mr. Tobriner: Could I be heard for one minute, Mr. Trial Examiner?

Trial Examiner Myers: Do not rush. Just take your time.

Mr. Tobriner: As to the contention of Mr. Jennings, do I understand—or I presume I misunderstood—that Mr. Jennings now takes the position that the National Labor Relations Board, in its characterization of this contract, was wrong? Is that correct?

Mr. Jennings: I make no such contention, Mr. Examiner. I say that when the Board used the language “closed shop,” it obviously was not deciding anything, because there was nothing before it for decision. It used that language to refer to the contract in a shorthand way, because it does have a union preference clause in it. Such contracts are often referred to as “closed shop,” although they are not accurately so characterized.

Mr. Tobriner: Then, Mr. Trial Examiner, I am interested now to find Mr. Jennings saying that since the Board did not have the subject matter before it as to the contract, its language is not to be considered seriously. That is opposition. There was not before this Board any question as to what the rights of the parties would be in the event that the election were voided. There was no argument as to the status of the parties thereafter.

It has been our position consistently, in accordance with what Mr. Jennings just said, that when a matter not considered by the Board does not come before it, that any language the Board does not make the law of the case. [399]

We therefore submit that the language of the Board as to the future status of the parties is not

binding upon us, and it was not intended to be, and that the practice of the parties as well as the showing of the contract itself will prove that there was a closed shop or union shop contract. The terms are used interchangeably very often.

Trial Examiner Myers: Does anyone wish to add anything to what they have said?

Mr. Agee: I would like the record to show, Mr. Examiner, that Mr. St. Sure was not able to be here today, and I would like the opportunity, if we may be allowed, to present a brief.

Trial Examiner Myers: Certainly. I announced that at the beginning of the hearing.

All parties have until the 16th to file their briefs.

Mr. Tobriner: For the purpose of the record, we will not be able to do it by that time because of intervening matters. We will ask the Chief Trial Examiner to defer the time.

Trial Examiner Myers: You may do so.

Mr. Tobriner: Thank you.

Trial Examiner Myers: It has been called to my attention that Board's Exhibit No. 10 has not been received in evidence. If there is no objection, it will be received, and I will ask the reporter to mark it as Board's Exhibit No. 10.

(The document heretofore marked Board's Exhibit No. 10 for identification was received in evidence.)

## BOARD'S EXHIBIT No. 10

Authorization for deduction of Union initiation fees and Union dues.

I, \_\_\_\_\_, a member of Cannery Workers Union of San Joaquin County Local No. 20676, A. F. of L., and an employee of \_\_\_\_\_, do hereby individually and voluntarily certify that I authorize, by this writing, the above named Company to deduct from my wages, and turn over to the Treasurer of Cannery Workers Union of San Joaquin County Local No. 20676, A. F. of L., any and all union initiation fees and dues certified by said Union to said employer now or hereafter to be due from or payable by me to said Union. This authorization is signed by me under the provisions of Section 3(c) of the collective bargaining agreement between California Processors and Growers, Inc., and the American Federation of Labor and California State Council of Cannery Unions, and shall continue in force until or unless it is revoked individually and voluntarily by me, in writing.

Dated: 194.....

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

Trial Examiner Myers: I want to poll the lawyers again to see whether they have any other witnesses they wish to call, or any other evidence to introduce.

Mr. Jennings?

Mr. Jennings: No, sir.

Trial Examiner Myers: Mr. Agee?

Mr. Agee: No, sir.

Trial Examiner Myers: Mr. Tobriner?

Mr. Tobriner: No, sir.

Trial Examiner Myers: Mr. Edises?

Mr. Edises: No, sir.

Trial Examiner Myers: Is there anything else you gentlemen want to take up with me before I declare the hearing closed?

(No response.)

Trial Examiner Myers: Hearing no request, I declare the hearing closed.

(Whereupon, at 4:55 o'clock p.m., Thursday, April 11, 1946, the hearing in the above-entitled matter was closed.)

## BOARD'S EXHIBIT No. 2

United States of America

Before the National Labor Relations Board

Cases Nos. 20-R-1414-1416, incl.; 20-R-1421-1452, incl.; 20-R-1455-1462, incl.; 20-R-1464-1465, incl.; 20-R-1473-1474, incl.; 20-R-1483; 20-R-1489; 20-R-1493-1523, incl.; 20-R-1530-1532, incl.

In the Matter of

BERCUT RICHARDS PACKING COMPANY,  
et al.,

and

CANNERY AND FOOD PROCESS WORKERS  
COUNCIL OF THE PACIFIC COAST AND  
ITS AFFILIATED UNIONS; FOOD, TO-  
BACCO, AGRICULTURAL AND ALLIED  
WORKERS UNION OF AMERICA, C.I.O.

Mr. Wallace E. Royster, for the Board.

Mr. J. Paul St. Sure, of Oakland, Calif., for the CP&G and certain of the Independent Companies.

Gladstein, Grossman, Sawyer & Edises, by Mr. Aubrey Grossman, of San Francisco, Calif., for the C.I.O.

Mr. Kneland C. Tanner, of Portland, Ore., for the Independent Council and affiliated locals.

Lazarus & Tobriner, by Mr. Mathew O. Tobriner,



of San Francisco, Calif., and Mr. J. A. Padway, of Washington, D.C., for the A.F.L. and affiliated locals.

Mr. A. Sumner Lawrence, of counsel to the Board.

## DECISION, DIRECTION OF ELECTIONS AND ORDER

### Statement of the Case

Upon separate petitions duly filed by various constituent unions of Cannery and Food Process Workers Council of the Pacific Coast, herein called the Independent Council, and by Food, Tobacco, Agricultural and Allied Workers Union of America, C.I.O., herein called the C.I.O., alleging that questions affecting commerce had arisen concerning the representation of employees of certain of the members of California Processors and Growers, Inc., Oakland, California, herein called CP&G, being the employers listed as members thereof in Appendix A<sup>1</sup> herein, jointly called the Members, and alleging that questions affecting commerce had arisen con-

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<sup>1</sup>Not listed on Appendix A are certain members with respect to whom no specific petitions for investigation and certification of representatives have been filed, but who otherwise appear from evidence introduced at the hearing to be engaged in commerce within the meaning of the National Labor Relations Act. Also not listed on Appendix A are the Companies referred to in the following proceedings as to which requests have been received for the withdrawal of the petitions therein: 20-R-1493, 1494, 1498, 1499, 1500, 1501, 1502, 1504, 1507, 1513, 1514, 1515, 1516, 1518, 1519, 1521, 1530, 1531. The requests for withdrawal of the petitions in the cases enumerated above are hereby granted.

cerning the representation of employees of each of the Companies listed as non-members in Appendix A, herein jointly called the Independent Companies, all of California, the National Labor Relations Board provided for an appropriate consolidated hearing upon due notice before John Paul Jennings, Trial Examiner. The hearing was held at San Francisco, California, at various times between July 3 and September 11, 1945. The CP&G,<sup>2</sup> the Independent Companies, the Independent Council and constituent unions, the C.I.O., and the California State Council of Cannery Workers and constituent unions, herein called the A.F.L., appeared and participated. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The motion of the A.F.L. that the record be reopened for further testimony and the motions of the A.F.L. and the CP&G that the proceedings as a whole be dismissed are hereby severally denied. All parties were afforded an opportunity to file briefs with the Board.<sup>3</sup>

Upon the entire record in the case, the Board makes the following:<sup>4</sup>

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<sup>2</sup>Counsel for the CP&G also appeared in behalf of the Members.

<sup>3</sup>On September 12, 1945, the Board denied the A.F.L.'s request for leave to present oral argument.

<sup>4</sup>On October 5, 1945, the Board issued a telegraphic decision in these proceedings, subject to confirmation by a written opinion consonant with the determinations and findings contained therein.

## Findings of Fact

## I. The Business of the Members and the Independents

The record reveals that all the companies involved herein, both Members and Independent Companies, are engaged in one or more phases of the canning or preserving industry in the State of California. Each Member and Independent Company among whose employees an election is hereinafter directed, ships a substantial amount of its products to points outside the State of California.<sup>5</sup>

Each of the Members and each of the Independent Companies among whose employees an election is hereinafter directed admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

## II. The Organizations Involved.

Cannery and Food Process Workers Council of the Pacific Coast and its affiliated unions, independent, are labor organizations admitting to membership employees of the Members and of the Independent Companies.

California State Council of Cannery Unions and its constituent unions, affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of the Members and of the Independent Companies.

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<sup>5</sup>See Appendix A.

Food, Tobacco, Agricultural and Allied Workers Union of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Members and of the Independent Companies.

### III. The Question Concerning Representation.

Neither the Members nor the Independent Companies will recognize any of the petitioning labor organizations as the collective bargaining representative of any of the employees involved herein in the absence of a certification by the Board.

The A.F.L. and the CP&G contend that an existing collective bargaining agreement, as recently extended to March 1, 1946, constitutes a bar to these proceedings. The C.I.O. disputes the validity of the extended agreement. Upon the facts in the present record, we shall assume the validity of the extended agreement hereinabove referred to. On the other hand, since it appears that the agreement will expire within a comparatively short period of time and that during the greater part of such period there will not be a representative number of employees working in the canning industry,<sup>6</sup> we find that the agreement is not a bar to a present determination of representatives. However, any certification of representatives which may issue as a result of the elections hereinafter directed shall

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<sup>6</sup>After October of the present year, at which time the tomato season will have terminated, until early summer of 1946, the various companies involved herein maintain only a skeleton maintenance force.

be solely for the purpose of designating a bargaining representative to negotiate a new agreement to become effective upon the expiration of the existing contract.<sup>7</sup>

In addition to the issues hereinabove referred to with respect to proceedings affecting members of the CP&G, the record discloses similar issues in proceedings relating to certain non-members of the CP&G hereinabove referred to as the Independent Companies.

Pacific Grape Products Company (20-R-1489.)

With respect to the above Company's present contractual relations as offering a bar to the present proceeding, it appears that, aside from a stipulation which binds the Company to incorporate in an agreement with a federal local of the A.F.L. any directive that might be issued by the National War Labor Board in a case pending in 1943 between the A.F.L. and the CP&G, the Company adopted on January 24, 1942, as its contract with the federal local concerned, the master contract between the A.F.L. and the CP&G. The master contract, as amended in 1943, continued until March 1, 1945, subject to automatic renewal in the absence of timely notice of termination or modification by either party, and also subject to cancellation by either party after March 1, 1945, if reopened in accordance with the notice provision aforesaid. So

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<sup>7</sup>See Matter of Joseph Dyson & Son, Inc., 60 N.L.R.B. 867; Matter of Peerless Stages, Inc., 62 N.L.R.B. 1518.

far as this contract between the Company and the federal local is concerned it is undisputed that timely notice was given by the A.F.L. in accordance with the terms of the automatic renewal provision. Unlike the CP&G, the Company has not expressly extended its agreement with the federal local party thereto. Inasmuch as under the terms of the automatic renewal provision thereof, the contract has not been automatically extended but has become, since March 1, 1945, a contract of indefinite duration subject to termination at the will of either party, we find that it constitutes no bar to a present determination of representatives. The stipulation also constitutes no bar, inasmuch as it is merely an agreement to enter into a contract.<sup>8</sup>

Basic Vegetable Products Company (20-R-1443.)

This Company contends that its existing contract with Federal Local Union 22382 is a bar to the proceeding under consideration. The contract was executed on February 14, 1945, with an expiration date of May 15, 1945, subject to automatic renewal in the absence of 15 days' notice of modification prior to the expiration date and also subject to cancellation by either party after May 15, 1945, under the notice provision which is substantially the same as that in the CP&G contract hereinabove referred to. The Company admits receiving prior to May 1, 1945, a communication from the repre-

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<sup>8</sup>Cf. Matter of Kimberly-Clark Corporation, 55 N.L.R.B. 521; Matter of Corn Products Refining Company, 52 N.L.R.B. 1324.

sentative of the Federal Local requesting negotiations under the automatic renewal provision. The Company contends, however, that no negotiations have taken place and that by reason thereof the contract was automatically renewed. We are of the opinion that the notice was sufficient to prevent automatic renewal of the contract and inasmuch as by its terms it is now terminable at will, we find that the contract is not a bar to a present determination of representatives.

A statement by the Trial Examiner, together with other evidence introduced at the hearing, indicates that the C.I.O. represents a substantial number of employees in the CP&G unit hereinafter found appropriate.<sup>9</sup> It further appears from evi-

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<sup>9</sup>The record indicates that as of the date of the hearing the C.I.O. had 10,128 designations from among a total of 32,287 employees of members of the CP&G. We find contrary to the contention of the A.F.L., that the C.I.O.'s showing of interest is sufficient to warrant the direction of an election in such unit. Moreover, even were this showing diminished by assuming as the basis of the CP&G unit the number of employees among members of the CP&G during peak or near peak operations, we are of the opinion that the C.I.O.'s showing would be sufficient since the last formal agreement between the A.F.L. and the CP&G contains a provision requiring new employees to make application for membership in the local A.F.L. union as a condition of their becoming employees of the CP&G member concerned. See *Matter of Aluminum Company of America*, 61 N.L.R.B. 245; *Matter of Empire Worsted Mills, Inc.*, 63 N.L.R.B., No. 220. The A.F.L. relied upon its contracts as evidence of its interest in the proceedings.

dence in the record that the Independent Council and its constituent unions represent a substantial number of employees of the Independent Companies in the several units hereinafter found appropriate.<sup>10</sup>

We find that questions affecting commerce have arisen concerning the representation of employees of the Members and the Independent Companies within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

#### IV. The Appropriate Unit.

The C.I.O. and the CP&G are agreed that all production and maintenance employees of members of the CP&G as covered by the master agreement between the A.F.L. and the CP&G constitute an appropriate unit.<sup>11</sup> The A.F.L., while agreeing to the suggestion of a multiple employer unit, contends that any multiple employer unit should embrace the

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<sup>10</sup>Although it appears that the C.I.O.'s showing of representation in units of employees of the Independent Companies is not substantial, we shall accord the C.I.O. a place on the ballot with respect to all elections in units other than in Case No. 20-R-1451 in which the C.I.O. made no showing of representation, since elections are otherwise to be directed in such units wherever there are adequate showings of interest on the part of the petitioners therein. However, in the cases listed in Appendix C wherein no substantial showing of interest has been made by any party to the proceedings, the petitions will be hereinafter dismissed.

<sup>11</sup>All parties are agreed that any unit which might be established by the Board should include the classifications covered by the master contract between the A.F.L. and CP&G.



employees of both CP&G members and also those of the Independent Companies who have customarily followed the lead of the CP&G and have executed agreements substantially identical with those of the CP&G. The Independent Council and its constituent unions contend that all units for any of the employees herein concerned should be upon a plant-by-plant basis as opposed to a multiple-employer unit.

The record discloses that for a period of approximately 8 years, representatives of the Members have met together as a group with representatives of their employees and upon conclusion of the negotiations a single contract has been executed by the CP&G and the A.F.L. By this practice of the employers' customary adherence to the uniform labor agreements resulting from such negotiations, the employers have demonstrated their desire to be bound by group rather than by individual action. Under these circumstances, we find that a unit comprised of the Members is proper for collective bargaining purposes.<sup>12</sup>

On the other hand, we are not persuaded that the history of collective bargaining compels a finding that the employees of the Independents should be part of the multiple-employer unit. There is no evidence that the Independents participated in the

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<sup>12</sup>See *Matter of Rayonier, Incorporated*, Grays Harbor Division, 52 N.L.R.B. 1269 at 1274, 1275; *Matter of Dolese & Shepherd Company*, 56 N.L.R.B. 532; *Matter of Rubin E. Rappeport, et al.*, 62 N.L.R.B. 1118.

negotiations between the CP&G acting on behalf of the Members and the A.F.L. Without any semblance of bargaining, the Independents signed agreements identical to those executed by the Members. We conclude, therefore, that the employees of each of the Independent Companies referred to in Appendix A, excluding those with respect to whom petitions have been withdrawn<sup>13</sup> comprise a separate appropriate unit.<sup>14</sup>

We find that all production and maintenance employees of member Companies of the CP&G,<sup>15</sup> excluding office and clerical employees and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

We further find that all production and maintenance employees of each of the Independents referred to in Appendix A and with respect to whom petitions are not hereinafter dismissed, excluding office and clerical employees and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in

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<sup>13</sup>See footnote 1.

<sup>14</sup>See *Matter of Advance Tanning Company*, 60 N.L.R.B. 923.

<sup>15</sup>It is hereby intended to include all member companies of CP&G and not only those listed in Appendix A.

the status of employees or effectively recommend such action, constitute separate units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

#### V. The determination of Representatives.

The A.F.L. contends that it is not possible to hold representative elections for canning employees during the tomato season now in progress. The record discloses that the number of employees among members of CP&G varies according to seasonal activities from a peak of in excess of 50,000 employees in mid-summer to a minimum of 4 or 5 thousand employees during the off-season beginning in November and ending in March of the following year. While it appears that the tomato season as compared with other fruit seasons does not require as many employees as do the peach and apricot seasons of mid-summer, employment during the tomato season, which usually averages about 20,000 employees, is considerably heavier than that in either of the other two remaining seasons, namely the spinach and asparagus seasons which extend from April 10 to June 30 of the normal canning year. Moreover, it is undisputed that during the tomato season substantially fewer casual and part-time employees and proportionately more full-time regular employees are employed than during the peak seasons. It further appears that if an election is not held now, no representative number of employees will be working until the summer of 1946. Under the circumstances, we are of the opinion

that a sufficiently representative group of employees are now employed and that the interests of the employees will be best served by the direction of elections immediately.

The constituent unions of the Independent Council requests a place on the ballot in the CP&G unit under the name of the Independent Council. Although the showing of the constituent unions of the Independent Council in this unit is not substantial, we shall accord them a place on the ballot under the name of the Independent Council as requested, inasmuch as an election is otherwise to be directed upon an adequate showing of representation.

We shall direct that the questions concerning representation which have arisen be resolved by elections by secret ballot among the employees in the appropriate units who were employed during the payroll period immediately preceding October 5, 1945, subject to the limitations and additions set forth in the Direction.<sup>16</sup>

### Direction of Elections

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National

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<sup>16</sup>The C.I.O. requested, and the A.F.L. agreed, that employees who have worked less than 25 days not be permitted to participate in the elections; the other parties expressed no opposition to such request. Accordingly, we find that such employees are ineligible to vote.

Labor Relations Board Rules and Regulations—Series 3, as amended, it is hereby

directed that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with California Processors and Growers, Inc., Oakland, California, as representative of its member companies, and for the purposes of collective bargaining with the Independents in the proceedings referred to in Appendix B, separate elections by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Twentieth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the units found appropriate in Section IV, above, who were employed during the payroll period immediately preceding October 5, 1945, to determine whether they desire to be represented by the organizations indicated in Appendix B<sup>17</sup> as appearing on the ballots for their respective unit for the purposes of collective bargaining, or by none of these organizations.

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<sup>17</sup>Subsequent to the issuance of the telegraphic decision by the Board, the C.I.O. requested that the names of the Sacramento, Stockton, and Modesto Independent Locals and the Independent Council be removed from the ballot and that in the event that such request for removal be denied, that the Sacramento and Modesto Locals be permitted to appear on the ballot as affiliates of the C.I.O. These requests are hereby denied.

## ORDER

It Is Hereby Ordered that the petitions referred to in Appendix C be, and they hereby are, dismissed.

Signed at Washington, D. C., this 12th day of October, 1945.

PAUL M. HERZOG,  
Chairman.

JOHN M. HOUSTON,  
Member,

[Seal]

National Labor Relations  
Board.

# APPENDIX A

## Members of the California Processors & Growers, Inc.

Case No.	Company	Address	Annual Sales	Percent interstate commerce	Pettitioner
1414	Bereut Richards Packing Company	Sacramento, Calif.	\$ 9,000,000	85	Cannery and Food Process Workers Union of Sacramento Area, affiliated with Cannery and Food Process Workers Council of the Pacific Coast.
1415	California Packing Corporation #12	Sacramento, Calif.	6,000,000	90	do.
1416	Libby, McNeil & Libby Company	Sacramento, Calif.	10,000,000	70	do.
1421	California Packing Corporation	Yuba City, Calif.	1,500,000	90	Cannery, Dried Fruit and Nut Workers Union of Oroville Area, affiliated with Cannery and Food Process Workers Council of the Pacific Coast.
1422	Harter Packing Company	Yuba City, Calif.	1,500,000	90	do.
1423	Santa Cruz Fruit Packing Company	Oroville, Calif.	5,800,000	70	do.
1424	Libby, McNeill & Libby Company	Gridley, Calif.	2,800,000	80	do.

## Appendix A—(Continued)

Case No.	Company	Address	Annual Sales	Percent interstate commerce	Petitioner
1425	Libby, McNeill & Libby Company	Selma, Calif.	\$2,500,000	84	Cannery & Food Process Workers' Union of Selma Area, affiliated with Cannery & Food Process Workers Council of the Pacific Coast.
1432	Mor-Pak Preserving Corp.	Stockton, Calif.	2,000,000	90	Cannery and Food Process Workers Union, Stockton Area, affiliated with Cannery & Food Process Workers Council of the Pacific Coast.
1433	Manteca Canning Co.	Manteca, Calif.	1,200,000	85	do.
1434	Foster and Wood Canning Co.	Lodi, Calif.	5,000,000	95	do.
1435	Richmond Chase Co.	Stockton, Calif.	4,500,000	85	do.
1436	California Packing Corp.	Stockton, Calif.	350,000	90	do.
1437	Stockton Food Products, Inc.	Stockton, Calif.	1,500,000	95	do.
1438	Thornton Canning Co.	Thornton, Calif.	3,500,000	90	do.
1439	Frank M. Wilson Co., Inc.	Stockton, Calif.	4,000,000	80	do.
1440	Escalon Packers, Inc.	Escalon, Calif.	1,000,000	95	do.



## Appendix A—(Continued)

Case No.	Company	Address	Annual Sales	Percent interstate commerce	Petitioner
1441	California Conserving Company	Ryde, Calif.	\$ 200,000	60	Cannery and Food Process Workers Union of Sacramento Area, affiliated with Cannery and Food Process Workers Council of the Pacific Coast.
1444	National Packing Company	Isleton, Calif.	1,056,000	75	do.
1445	Heinz Corporation	Isleton, Calif.	500,000	50	do.
1446	Pratt Lowe Canning Company	Ryde, Calif.	700,000	89	do.
1448	Libby, McNeill & Libby Company	Nimbus, Calif.	335,000	50	do.
1449	California Packing Corporation #11	Sacramento, Calif.	5,500,000	90	do.
1452	Lincoln Packing Company	Lincoln, Calif.	1,500,000	90	do.

## Appendix A—(Continued)

Case No.	Company	Address	Annual Sales	Percent interstate commerce	Petitioner
1456	Riverbank Canning Company	Riverbank, Calif.	\$3,000,000	90	<b>Cannery and Food Process Workers Union of Modesto Area, affiliated with the Cannery &amp; Food Process Workers Council of the Pacific Coast.</b>
1460	Turlock Cooperative Growers	Modesto, Calif.	3,500,000	95	<b>do.</b>
1461	Tri-Valley Packing Association	Modesto, Calif.	3,113,580	85	<b>do.</b>
1462	G. W. Hume Company	Turlock, Calif.	1,953,000	62	<b>do.</b>
1483	California Processors & Growers, Inc.	Oakland, Calif.	See affiliated companies		<b>Food, Tobacco, Agricultural &amp; Allied Workers' Union of America.</b>

Non-Members of the California Processors &  
Growers, Inc.

Case No.	Company	Address	Annual Sales	Percent interstate commerce	Petitioner
1427	Aron Canning Company	Stockton, Calif.	\$1,000,000	98	Cannery and Food Process Workers Union, Stockton Area, affiliated with Cannery & Food Process Workers Council of the Pacific Coast.
1428	Califruit Canning Co.	Manteca, Calif.	over 100,000	90	do.
1429	Flotill Products, Inc.	Stockton, Calif.	3,000,000	95	do.
1430	Allen R. Parrish Co.	Stockton, Calif.	300,000	65	do.
1431	H. F. Churehill Co.	Stockton, Calif.	1,000 Tons	over 50	do.
1442	Matmor Canning Company	Woodland, Calif.	2,000,000	99	Cannery and Food Process Workers Union of Sacramento Area, affiliated with Cannery & Food Process Workers Council of the Pacific Coast.
1443	Basic Vegetable Products Company	Vacaville, Calif.	6,000,000	95	do.
1447	Fair Oaks Fruit Company	Fair Oaks, Calif.	375,000	75	do.
1451	Ensher, Alexander & Barsom, Inc.	Isleton, Calif.	750,000	67	do.

## Appendix A—(Continued)

Case No.	Company	Address	Annual Sales	Percent interstate commerce	Petitioner
1455	Flotill Products, Inc.	Modesto, Calif.	\$5,500,000	95	Cannery and Food Process Workers Union of Modesto Area, affiliated with Cannery & Food Process Workers Council of the Pacific Coast.
1457	Sardik Food Products Corporation	Riverbank, Calif.	1,600,000	99	do.
1458	Stanislaus Canning	Modesto, Calif.	1,000,000	95	do.
1459	Pacific Packing Company	Oakdale, Calif.	1,800,000	80	do.
1464	Scientific Nutrition Corporation, d/b/a Capolino Packing Corporation	Atwater, Calif.	1,500,000	36	do.
1465	Kadota Fig Association	Merced, Calif.	over 1,000,000	over 50	do.
1473	California Pet Foods Co.	Sacramento, Calif.	Not known	100	Cannery and Food Process Workers Union of Sacramento Area, affiliated with Cannery & Food Process Workers Council of the Pacific Coast.
1474	Sacramento Frosted Food Co.	Sacramento, Calif.	Not known	50	do.

Case No.	Company	Address	Annual Sales	Percent interstate commerce	Petitioner
1489	Pacific Grape Products	Modesto, Calif.	3,700,000	80	Cannery and Food Process Workers Union of Modesto Area, affiliated with Cannery & Food Process Workers Council of the Pacific Coast.
1495	Booth Company, Inc.	Centerville, Calif.	over 100,000	over 50	Food, Tobacco, Agricultural and Allied Workers Union of America, C. I. O.
1496	Watsonville Canning Company	Watsonville, Calif.	—	—	do.
1497	Walnut Creek Canning Company	Walnut Creek, Calif.	750,000	99	do.
1503	Pearce Canning Company	Decoto, Calif.	over 100,000	over 50	do.
1505	Fred A. Plagg Company	Manteca, Calif.	over 100,000	over 50	do.
1506	L. & L. Packing Company, Inc.	San Jose, Calif.	over 100,000	over 50	do.
1508	San Garden Packing Company	San Jose, Calif.	over 100,000	over 50	do.

## Appendix A—(Continued)

Case No.	Company	Address	Annual Sales	Percent interstate commerce	Petitioner
1509	San Jose Canning Company	San Jose, Calif.	over \$100,000	over 50	Food, Tobacco, Agricultural and Allied Workers Union of America, C. I. O.
1510	Raiter Canning Company	Salinas, Calif.	over 50,000	60	do.
1511	California Sunset Products Company	Merced, Calif.	over 100,000	over 50	do.
1512	California Frozen Foods	Turlock, Calif.	over 100,000	over 50	do.
1517	Fruitvale Canning Company	Oakland, Calif.	5,000,000	75	do.
1520	Fair View Packing Company	Hollister, Calif.	over 100,000	over 50	do.
1522	Hershel California Fruit Products, Inc.	San Jose, Calif.	over 100,000	over 50	
1523	Hollister Canning Company, Inc.	Hollister, Calif.	over 100,000	over 50	do.
1532	Planads Packers	Planada, Calif.	over 100,000	over 50	do.

## APPENDIX B

Case No. 20-R-	Name	Parties on Ballot
1427	Aron Canning Co.	Cannery and Food Process Workers Union of Stockton Area, affiliated with Cannery and Food Process Workers Council of the Pacific Coast; California State Council of Cannery Unions, American Federation of Labor; Food, Tobacco, Agricultural & Allied Workers Union of America, C. I. O.
1428	Califruit Canning Co.	do.
1429	Flotill Products, Inc.	do.
1430	Alen R. Parrish Co.	do.
1443	Basic Vegetable Products Co.	Cannery and Food Process Workers Union of Sacramento Area, affiliated with Cannery and Food Process Workers Council of the Pacific Coast; California State Council of Cannery Unions, American Federation of Labor; Food, Tobacco, Agricultural & Allied Workers Union of America, C. I. O.
1447	Fair Oaks Fruit Co.	do.
1451	Ensher Alexander & Barsoom, Inc.	Cannery and Food Process Workers Union of Sacramento Area, affiliated with Cannery and Food Process Workers Council of the Pacific Coast; California State Council of Cannery Unions, American Federation of Labor.

## APPENDIX B

Case No. 20-R-	Name	Parties on Ballot
1457	Sardik Food Products Corp.	Cannery and Food Process Workers Union of Modesto Area, affiliated with Cannery and Food Process Workers Council of the Pacific Coast; California State Council of Cannery Unions, American Federation of Labor; Food, Tobacco, Agricultural & Allied Workers Union of America, C. I. O.
1458	Stanislaus Canning Co.	do.
1464	Scientific Nutrition Corp., d/b/a Capolino Packing Corp.	do.
1473	California Pet Foods Co.	Cannery and Food Process Workers Union of Sacramento Area, affiliated with Cannery and Food Process Workers Council of the Pacific Coast; California State Council of Cannery Unions, American Federation of Labor; Food, Tobacco, Agricultural & Allied Workers Union of America, C. I. O.
1474	Sacramento Frosted Foods Co.	do.
1483	California Process & Growers, Inc.	Cannery and Food Process Workers Council of the Pacific Coast; California State Council of Cannery Unions, American Federation of Labor; Food, Tobacco, Agricultural & Allied Workers Union of America, C. I. O.



Case No. 20-R-	Name	Parties on Ballot
1489	Pacific Grape Products Co.	Cannery and Food Process Workers Union of Modesto Area, affiliated with Cannery and Food Process Workers Council of the Pacific Coast; California State Council of Cannery Unions, American Federation of La- bor; Food, Tobacco, Agricultural & Allied Workers Union of America, C. I. O.
1495	Booth Company, Inc.	California State Council of Cannery Unions, American Federation of La- bor; Food, Tobacco, Agricultural & Allied Workers Union of America, C. I. O.
1510	Raiter Canning Company	do.
1517	Fruitvale Canning Co.	do.

## APPENDIX C

Case No.  
20-R-

Company Name

1431	H. F. Churchill Company
1442	Matmor Canning Co.
1455	Flotilla Products, Inc.
1465	Kadota Fig Association
1496	Watsonville Cannery
1497	Walnut Creek Cannery Co.
1503	Pearce Canning Company
1505	Fred A. Plagg Company
1506	L. & L. Packing Company, Inc.
1508	Sun Garden Packing Company
1509	San Jose Canning Company
1511	California Sunset Products Company
1512	California Frozen Foods
1520	Fair View Packing Company
1522	Hershel California Fruit Products, Inc.
1523	Hollister Canning Company, Inc.
1532	Planada Packers

## BOARD'S EXHIBIT No. 3

[Title of Board and Causes.]

## SUPPLEMENTAL DECISION AND ORDER

## Statement of the Case

Pursuant to a telegraphic Decision and Direction of Elections issued on October 5, 1945, and confirmed in a printed Decision issued by the Board on October 12, 1945, elections by secret ballot were conducted under the direction and supervision of the Regional Director for the Twentieth Region (San Francisco, California) among the employees of members of California Processors and Growers, Inc., hereinafter referred to as CP&G, and among the employees of certain Independent Companies, herein jointly referred to as the Independent Companies. The elections were conducted from October 11 to October 18, 1945, inclusive<sup>1</sup> with results, other than those subsequently reported, as set forth in the Tallies of Ballots and in the Regional Director's Report on Challenged Ballots and Report on Lincoln Packing Company ballots, issued on October 22, 1945, and on December 21, 1945, respectively.<sup>2</sup>

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<sup>1</sup>Except for the election at Allen R. Parrish Co., which was held on December 20, 1945.

<sup>2</sup>The election results as reported in the Tally of Ballots and the Report on Challenged Ballots and Report on Lincoln Packing Company ballots are set forth in Appendix A. In view of our opinion concerning the objections, we find it unnecessary to make any disposition of the challenged ballots cast in the several elections.

Between October 29, 1945, and January 5, 1946, the AFL duly filed objections to the conduct of the ballot in the several elections affecting employees of CP&G and of the Independent Companies.<sup>3</sup> On December 7, 1945, the C.I.O. filed an answer to the A.F.L.'s objections. On January 16, 1946, the Regional Director issued a Report on Objections,<sup>4</sup> in which report the Regional Director found that the Objections of the A.F.L. raised no substantial or material issues with respect to the conduct of the elections and recommended that they be overruled. Thereafter, the A.F.L. filed exceptions to the Report on Objections. On January 24, 1946, all parties argued orally before the Board in Washington, D. C., the issues raised by the A.F.L.'s objections.

#### The Issues Raised by the Objections

The A.F.L. filed 21 objections. Some of the objections are highly technical, consistent with the A.F.L.'s unremitting attempts to block or discredit these particular elections. If, however, the Board is to do justice in such a case, it must weigh the merits without regard to the motives or methods of an objecting party.

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<sup>3</sup>The C.I.O. also filed objections with respect to elections at two of the Independent Companies, but has since withdrawn them with the statement that they were "insubstantial."

<sup>4</sup>In addition to reporting on objections, the Regional Director reported on challenged ballots in two inconclusive elections among employees of the Independent Companies.

An analysis indicates that the objections fall into four categories: (1) Charges that Board agents displayed partiality to the C.I.O. and hostility to the A.F.L.; (2) charges that irregularities occurred at the polling places through the failure of Board agents to stop electioneering near the booths, making last minute changes in the hours of voting, and impairing the secrecy of the ballot by letting several persons enter a booth at the same time; (3) charges that the Board failed to provide lists which revealed with any degree of accuracy the eligibility of the voters; and (4) charges that the Direction of Election was erroneously interpreted in two particulars, thereby resulting in the disenfranchisement of many employees, and in the improper use of the ballot by many persons ineligible to vote.

With respect to the first contention, we agree, after reviewing the Regional Director's analysis of the evidence, that his finding that no Board agent displayed any favoritism or prejudice towards any of the rival unions is amply sustained. Although there may have been some temporary confusion at some of the voting places, the record establishes no bias, misconduct or neglect of duty on the part of the Regional Director or any of the Board agents in conducting the elections.<sup>5</sup> It appears that the Director and his assistants performed a difficult

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<sup>5</sup>Indeed, counsel for the A.F.L. stated at the oral argument that he was not asserting any bias, misconduct or other failure of the Regional Director to perform his duty to the best of his ability under the circumstances. Counsel said that the task assigned was an impossible one on such short notice.

task with diligence, but were seriously handicapped by the pressure of time, due to the Board's having ordered the elections at the very end of the season.

The objections falling into the second category were accompanied by several affidavits, most of them executed by A.F.L. observers in the various plants where the elections were held. In investigating the truth of these affidavits, the Regional Director also obtained affidavits from other persons who had been at the polling places and reached the conclusion that these objections were without merit. It was the position of the A.F.L. counsel at the oral argument that since the affiants made allegations which, if true, do point to serious irregularities, the Regional Director should not have held that these questions were so immaterial that a formal hearing was not required. We take the view that where affidavits do raise serious issues, the better practice is to resolve any question of the credibility of the affiant at a hearing rather than on the basis of reports and counter-affidavits.<sup>6</sup> In this case, however, the taking of testimony on these issues would necessarily be extremely protracted, and, even assuming that the evidence led us to overrule the objections, it could not result in a final decision or certification until the 1946 season had been in progress for many months and new employees were working in the canneries. Because of other aspects of the case, we have concluded that a hearing is unnecessary.

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<sup>6</sup>See *Matter of Loose Wiles Biscuit Company*, 60 N.L.R.B. 814.

We are much more seriously concerned with the objections in the third and fourth categories, because the Regional Director's report itself reveals that certain of these contentions have a real basis in fact. Under the Decision and Direction of Election, a person who had worked a total of 25 days at more than one plant in the CP&G unit was entitled to vote. In other words, even though the payroll at the particular plant where the vote was taken might indicate that certain workers had not been employed for the requisite time, such voters nevertheless had right to have the days worked at other plants "tacked on" to their record. Since there were some 61 plants in the association unit, no eligibility list for a single plant would be decisive on the voting rights of an employee who had worked previously for other companies in the association. Nevertheless, no master eligibility list was available for use at the polling places.<sup>7</sup>

Nor were many lists made sufficiently available to all parties well before the balloting began, although that is the invariable custom in Board elections. Thus, no one knew, sufficiently ahead of

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<sup>7</sup>It is apparent from the record that the necessity of conducting the elections immediately, in anticipation of a seasonal decline in canning operations, made it difficult to prepare a master eligibility list for use at the elections in the CP&G unit, and contributed to the inadequacy of those eligibility lists used at the elections among employees of the Independent Companies. No blame can attach to the Regional Director for not taking this conventional precaution, whatever our view of the important effect of its absence upon the merit of the objections.

time, who should be challenged, or the facts upon which a challenge could be based. It therefore appears that, although the right to challenge was exercised in numerous instances by union observers, they had no sure means of determining objectively the eligibility of employees who claimed the right to vote by reason of having worked a total of 25 days at more than one plant in the CP&G unit.

Even more serious is a parallel objection with respect to elections involving 3,500 employees at 10 CP&G plants (enough to affect the result of the entire CP&G election), where admittedly no pay-rolls or other means existed which made it possible to ascertain eligibility under the 25-day requirement. No data was provided as to the number of days worked in these individual plants. In these instances, no extrinsic facts were available to indicate how many days particular voters had worked in the very plant being voted. Thus there was not even a sure figure to which additional days worked elsewhere might have been added or "tacked." We are of the opinion that in the absence of objective means for determining eligibility, the possibility of error in permitting ineligible employees to cast ballots was substantial. It was not precluded by the fact that in many instances the observers of the several labor organizations agreed upon the eligibility of individual employees, sometimes by refraining from challenging them. It is apparent from the record that such observers could not, in fact, have had adequate advance knowledge of the



factors required for determining the eligibility of those employees who claimed to have worked the required number of days.

With respect to errors in the interpretation of the Board's Decision, the A.F.L. maintains that the wording of the Decision created uncertainty as to whether the 25-day eligibility period expired on October 5, 1945, the date of the Board's telegraphic Decision, or whether it extended so as to permit days worked to be computed up to the date of the individual elections,<sup>3</sup> which were held between October 11 and 18. The AFL further contends that the words "temporarily laid off" in the Decision should have been interpreted by the Regional Director to include "seasonal lay-offs" (employees who had worked during earlier peak periods in the 1945 season), as well as employees who were merely temporarily laid off during the week of October 5.

So far as the eligibility provision is concerned, while the issue was not specifically raised at the original hearing,<sup>9</sup> both the language of the Decision

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<sup>8</sup>The latter interpretation was that adopted and applied by the Regional Director to all the elections involved herein. The telegraphic decision declared as eligible those employees "who were employed during the payroll period immediately preceding October 5, 1945, and have worked a total of 25 days during the current season within the unit . . . including employees who did not work during said payroll period because they were ill or on vacation or temporarily laid off . . ."

<sup>9</sup>The parties agreed at the hearing to the inclusion of the eligibility provisions substantially in the form adopted by the Board.

and the applicable precedents indicate a limitation of the 25-day test to the period prior to October 5. Our usual practice of designating a payroll date is for the purpose of freezing eligibility immediately upon the publication of the Decision, lest employers be free to determine who may exercise the franchise by offering later employment to particular individuals. On the rare occasions in which we have permitted eligibility for voting purposes to be computed up to the very day of the election, it has not been our practice to insert, as we did here, a specific payroll date in the Decision and Direction of Election. Although the Regional Director acted in good faith in adopting a contrary interpretation, a majority of the Board members construe the Decision otherwise. It follows that under the pre-election ruling an undetermined number of employees who would otherwise have been ineligible to vote were permitted to cast their ballots without challenge.<sup>10</sup>

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<sup>10</sup>To be sure, the Regional Director's Report on Challenges indicates that at some plants a certain number of voters were challenged on this ground. His Report on Objections, however, shows that in many plants his ruling was accepted by all the observers. As his report states on page 8:

Voters who were not shown as having worked 25 days up to the end of the payroll period immediately preceding October 5, 1945, but who showed evidence such as check stubs of a total of at least 25 days' work through the voting date, or in the absence of such evidence as to whose eligibility on this basis all the observers agreed, were voted without challenge.

It is therefore clear that his interpretation caused observers to waive their right to challenge in an indeterminable number of instances.

Another complication developed from the use of the words "temporarily laid off" in the Board's telegraphic Decision. The issue as to whether employees known as "seasonal layoffs"<sup>11</sup> should have been held eligible to vote was likewise not expressly raised by the parties at the original hearings, which were held during the summer. Accordingly, the Board adopted its usual language with respect to temporarily laid off employees, which language was accorded its normal interpretation by the Regional Director, without reference to the fact that this was an industry with fluctuating seasons. He advised the parties that the only persons eligible would be those employed during the then current tomato season, and that only those in that category who happened to be "temporarily laid off" during the week of October 5 might vote. Inasmuch, however, as the appropriate bargaining units necessarily include all persons employed at any time during the entire canning season, and that any certification issued would govern the relations of the employers with employees hired during the entire 1946 season, the franchise should not have been so lightly denied to any such 1945 employees,<sup>11a</sup> provided they had worked the requisite 25 days before October 5. Although there may be no direct evidence that any of the seasonally laid off employees were deprived of the right to cast challenged ballots, it is plain

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<sup>11</sup> and <sup>11a</sup> Employees who worked during the earlier spinach, asparagus, apricot and peach seasons. Almost 40,000 men and women had been employed during the August-September peach season in 1944. About 12,250 voted in this election.

that an indeterminable number of the thousands of employees within the unit must naturally have refrained from taking the seemingly futile step of going to the polls, by reason of the Regional Director's previously announced interpretation.<sup>12</sup> It is this very uncertainty that gives us pause. It raises more than a speculative possibility that the results were not fully representative.

Upon consideration of all the foregoing facts, we are of the opinion that the elections were not, under the circumstances here presented, attended by such procedural safeguards or certainty concerning eligibility as to constitute a proper foundation for a Board certification in an industry which has been the scene of such bitter strife. There is substantial doubt whether the results are truly representative of the desires of the employees who should have been eligible to vote therein.<sup>13</sup> It is of

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<sup>12</sup>Chairman Herzog does not concur in this paragraph to the extent that it implies that the Regional Director interpreted our opinion of October 12 erroneously. The first paragraph of Section V of that opinion, relating to the tomato season, seems to the Chairman to support the Director's interpretation of the opinion as written. It remains true, however, that the original determination by the Board may well have done a substantial and avoidable injustice to a large number of other employees, and that it was probably incorrect when reached. The Chairman believes that there are substantial other reasons, already recited, which warrant the ultimate result herein.

<sup>13</sup>See Matter of Kennecott Copper Corporation, 55 N.L.R.B. 928. See also Matter of Mobile Steamship Company, 11 N.L.R.B. 374.

vital importance to the Board's effectuation of the policies of the Act that the integrity of its procedures be maintained at all times and at all cost, and that the regularity of the conduct of its elections be above reproach. In this view of the matter, it is relatively unimportant that there is no sure proof that one party to the election was prejudiced more than the other.

We therefore are constrained to conclude that the balloting was not conducted in accordance with our usual standards or under conditions tending to create confidence in the result or to lay the foundation for satisfactory bargaining. We are of the opinion, therefore, that the purposes of the Act will best be served by setting aside all of the elections held herein.

While we view the record as requiring this result, we reach it with considerable reluctance because it means that the employees will have no bargaining representative to negotiate an exclusive collective agreement to cover the coming season, until a new election can be held which may result in one of the rival unions being certified. The current AFL contract will expire on March 1, and since the legal effect of the foregoing determination is to keep the question of representation pending before the Board, none of the unions is entitled to an exclusive status as the bargaining agent after that date. In accordance with well-established principles,<sup>14</sup> the employers may not, pending a new election, give

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<sup>14</sup>See *Matter of Midwest Piping & Supply Co., Inc.*, 63 N.L.R.B. 163. See also *Matter of Ken-Rad Tube & Lamp Corp.*, 62 N.L.R.B. 21.

preferential treatment to any of the labor organizations involved, although they may recognize each one as the representative of its members. In this state of the record, no legal effect may be given the closed-shop provision contained in the current collective agreements after their expiration date;<sup>15</sup> the inclusion of any such provision in any new agreements, or action pursuant thereto, would clearly be contrary to the proviso in Sub-section 8 (3). Nothing in our decision, however, should be construed as requiring any change in the substantive conditions of employment now existing by virtue of the foregoing agreements.

In order to expedite final disposition of the case, the Board will conduct new elections as soon as eligibility lists can be prepared which meet the objections discussed herein. Upon appropriate motion, the Board will explore the possibility of holding the election at an early date by use of mail ballots as well as by the manual method, provided the feasibility of this procedure, with adequate safeguards, can be demonstrated by the submission of data not incorporated in the present record. As an alternative, the Board will consider holding a new manual election as early in the 1946 season as there is substantial re-employment.

In setting aside these elections, we are aware of the fact that the procedural defect arising from the

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<sup>15</sup>Moreover, no requests for discharges resulting from activity in the election are justified even under the present agreement. See *Matter of Rutland Court Owners*, 44 N.L.R.B. 587, 46 N.L.R.B. 1040.

absence of a master eligibility list is not applicable to the elections held among employees of the Independent Companies. However, the other defects based on uncertainty concerning the meaning of 25-day eligibility rule and the action taken respecting employees "temporarily laid off," are just as applicable to these elections as they are to the elections held among the employees in the CP&G unit. We are of the opinion that by reason of these difficulties, the elections conducted among employees of the Independent Companies raise such a possibility of error that such elections should also be vacated and set aside. As a practical matter, this will be in harmony with our ruling regarding the elections in the CP&G unit and will avoid inconsistent disposition of the problems of the cannery industry.

### ORDER

It Is Hereby Ordered that the elections held from October 11 to December 20, 1945, inclusive, among the employees of members of CP&G and among the employees of the Independent Companies be, and they hereby are, vacated and set aside.

Signed at Washington, D.C., this 15th day of February, 1946.

PAUL M. HERZOG,  
Chairman.

GERARD D. REILLY,  
Member,

[Seal]

National Labor Relations  
Board.

John M. Huston, dissenting:

In the circumstances of these cases, I am of the opinion that the objections to the conduct of the election should be overruled and that the Regional Director's Report on such objections should be sustained. As is always the case when the Board is called upon to conduct a ballot in an industry, seasonal in nature, with geographically widespread operations and employing large groups of transient labor, the difficulties of obtaining a precise result unattended by imperfections are greatly magnified. In the present case my colleagues have pointed to a number of contingencies as the basis for their decision to set these elections aside. Granted that the possibilities alluded to in the majority opinion might have had the effect of producing deviations from normally acceptable consequences, the issue whether they are so serious as to have rendered a representative and fairly conclusive choice impossible must be answered, in my judgment, in the negative.

The Board in these cases was confronted with the necessity of designating a period of eligibility which would conduce to a representative vote. In order to do so the Board was careful to take as a period in which to conduct the ballot, a period in the operations of the industry during which the largest num-



ber of "year-round" employees were employed.<sup>16</sup> Preparations for the elections were consequently speeded and, so far as I am aware, these preparations were carried on in a careful and skillful manner. The elections were conducted also with a view toward the quick settlement of a protracted dispute of particular significance to an industry vital to our national well-being. In the course of the Board's preparation for and conduct of those elections irregularities did occur, as they inevitably must have occurred in such circumstances. It is of extreme importance to note, however, that neither contestant can claim that its chances of success were thereby prejudiced. Both came to the polls with equal advantages and equal handicaps. While I am in whole-

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<sup>16</sup>The suggestion in the decision that the words "temporarily laid off" in our Decision and Direction of Elections were erroneously interpreted is without substance in my judgment. The then current tomato season was the period during which most regular employees worked. Balloting of these employees was considered as likely to produce a highly representative vote. But Regional Director's interpretation of the above language to mean that only employees laid off during that period were to be considered temporarily laid off employees was in accord with that purpose and I am constrained to disagree with the decision on this issue. The fact that a certification, if one issued, would be effective for all employees in the unit during the 1946 season does not support the majority view. Many times our certifications are based upon balloting considered to be most likely to produce a representative selection, although all employees in the unit certified do not participate. This is especially the case in industries which operate upon a seasonal basis.

hearted accord with my colleagues that "it is of vital importance to the Board's effectuation of the policies of the Act that the integrity of its procedures be maintained at all times and at all cost, and that the regularity of the conduct of its elections be above reproach," I do not think that, in the peculiar conditions existing in this industry, we would endanger those policies by refusing to disturb these elections.

In view of the majority decision the challenged ballots will not be opened and counted. I should have ordered them opened and counted, in my view of the case. Because the tally shows a great probability that the C.I.O Union would have secured a conclusive majority, needing approximately 63 votes of a total of 1291 challenged ballots, it would appear that a certification of representatives would have been issued. This doubtless would have clarified the respective rights and obligations of the parties apropos collective bargaining relationships for the coming season.

Signed at Washington, D. C., this 15 day of February 1946.

[Seal]

JOHN M. HOUSTON,

Member, National Labor Relations Board.

## APPENDIX A

## C. P. &amp; G.

Approximate number of eligible voters.....	23,545
Valid votes counted.....	10,968
Votes cast for California State Council of Cannery Unions, A. F. of L.....	4,701
Votes cast for F. T. A.-C. I. O. ....	6,067
Votes cast for Cannery and Food Process Workers Council of the Pacific Coast, Independent.....	110
Votes cast against participating labor organizations..	90
Challenged ballots .....	1,291
Void ballots .....	248

## Allen R. Parrish Company

Approximate number of eligible voters.....	67
Valid votes counted.....	40
Votes cast for California State Council of Cannery Unions, A. F. of L. ....	7
Votes cast for F. T. A.-C. I. O.....	33
Votes cast for Cannery and Food Process Workers Union of Stockton Area, Independent.....	0
Votes cast against participating labor organizations	0
Challenged ballots .....	14
Void ballots .....	0

## Stanislaus Canning Company

Approximate number of eligible voters.....	154
Valid votes counted.....	80
Votes cast for California State Council of Cannery Unions, A. F. of L.....	9
Votes cast for F. T. A.-C. I. O.....	71
Votes cast for Cannery and Food Process Workers Union of Modesto Area, Independent.....	0
Votes cast against participating labor organizations	0
Challenged ballots.....	2
Void ballots.....	4

## Califruit Canning Co.

Approximate number of eligible voters.....	136
Valid votes counted.....	101
Votes cast for California State Council of Cannery Unions, A. F. of L.....	22
Votes cast for F. T. A.-C. I. O.....	77
Votes cast for Cannery and Food Process Workers Union of Stockton Area, Independent.....	1
Votes cast against participating labor organizations	1
Challenged ballots.....	0
Void ballots.....	2

## Scientific Nutrition Corporation, doing business as

## Capolino Packing Corporation

Approximate number of eligible voters.....	107
Valid votes counted.....	57
Votes cast for California State Council of Cannery Unions, A. F. of L.....	35
Votes cast for F. T. A.-C. I. O.....	22
Votes cast for Cannery and Food Process Workers Union of Modesto Area, Independent .....	0
Votes cast against participating labor organizations..	0
Challenged ballots.....	0
Void ballots .....	0

## Aron Canning Co.

Approximate number of eligible voters.....	29
Valid votes counted.....	26
Votes cast for California State Council of Cannery Unions, A. F. of L.....	20
Votes cast for F. T. A.-C. I. O.....	6
Votes cast for Cannery and Food Process Workers Union of Stockton Area, Independent.....	0
Votes cast against participating labor organizations	0
Challenged ballots.....	0
Void ballots.....	0

## Ensher, Alexander &amp; Barsoom, Inc.

Approximate number of eligible voters.....	225
Valid votes counted.....	96
Votes cast for California State Council of Cannery Unions, A. F. of L.....	64
Votes cast for Cannery and Food Process Workers Union of Sacramento Area, Independent.....	28
Votes cast against participating labor organizations..	4
Challenged ballots.....	4
Void ballots .....	3

## Booth Company, Inc

Approximate number of eligible voters.....	296
Valid votes counted.....	176
Votes cast for California State Council of Cannery Unions, A. F. of L.....	123
Votes cast for F.T.A.-C.I.O.....	52
Votes cast against participating labor organizations..	1
Challenged ballots.....	14
Void ballots.....	2

**Raiter Canning Company**

Approximate number of eligible voters.....	96
Valid votes counted.....	49
Votes cast for California State Council of Cannery Unions, A. F. of L.....	30
Votes cast for F. T. A.-C. I. O.....	19
Votes cast against participating labor organizations..	0
Challenged ballots .....	10
Void ballots.....	2

**Sardik Food Products Corporation**

Approximate number of eligible voters.....	40
Valid votes counted.....	31
Votes cast for California State Council of Cannery Unions, A. F. of L.....	10
Votes cast for F. T. A.-C. I. O.....	21
Votes cast for Cannery and Food Process Workers Union of Modesto Area, Independent.....	0
Votes cast against participating labor organizations..	0
Challenged ballots.....	1
Void ballots.....	1

**Fruitvale Canning Company**

Approximate number of eligible voters.....	591
Valid votes counted .....	234
Votes cast for California State Council of Cannery Unions, A. F. of L.....	56
Votes cast for F. T. A.-C. I. O.....	178
Votes cast against participating labor organizations..	0
Challenged ballots.....	21
Void ballots.....	1

**Basic Vegetable Products Company**

Approximate number of eligible voters.....	494
Valid votes counted.....	285
Votes cast for California State Council of Cannery Unions, A. F. of L.....	115
Votes cast for F. T. A.-C. I. O.....	169
Votes cast for Cannery and Food Process Workers Union of Sacramento Area, Independent.....	0
Votes cast against participating labor organizations..	1
Challenged ballots.....	47
Void ballots.....	5

## Pacific Grape Products, Inc.

Approximate number of eligible voters.....	333
Valid votes counted .....	201
Votes cast for California State Council of Cannery Unions, A. F. of L.....	4
Votes cast for F. T. A.-C. I. O.....	193
Votes cast for Cannery and Food Process Workers Union of Modesto Area, Independent.....	4
Votes cast against participating labor organizations..	0
Challenged ballots.....	1
Void ballots.....	0

## Flotill Prodets, Inc.

Approximate number of eligible voters.....	305
Valid votes counted.....	205
Votes cast for California State Council of Cannery Unions, A. F. of L.....	105
Votes cast for F. T. A.-C. I. O.....	100
Votes cast for Cannery and Food Process Workers Union of Stockton Area, Independent.....	0
Votes cast against participating labor organizations	0
Challenged ballots.....	20
Void ballots.....	7

## Sacramento Frosted Foods Co.

Approximate number of eligible voters.....	85
Valid votes counted.....	62
Votes cast for California State Council of Cannery Unions, A. F. of L.....	28
Votes cast for F. T. A.-C. I. O.....	34
Votes cast for Cannery and Food Process Workers Union of Sacramento Area, Independent.....	0
Votes cast against participating labor organizations..	0
Challenged ballots.....	11
Void ballots.....	1

## Lincoln Packing Company

Approximate number of eligible voters.....	150
Valid votes counted <sup>17</sup> .....	77

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<sup>17</sup>The ballots in this election in which there were apparently no challenged ballots, have not been counted but have been impounded, pending a determination of the question as to whether the employees of Lincoln Packing Company should be included in the C. P. & G unit or should constitute a separate appropriate unit.

BOARD'S EXHIBIT No 4

Collective Bargaining Agreement Between California Processors and Growers, Inc., and The American Federation of Labor and California State Council of Cannery Unions as Adopted June 10, 1941, Amended January 26, 1942, Amended July 10, 1943.

Agreement

This Agreement made and entered into this 10th day of June, 1941, (as amended January 26, 1942 and July 10, 1943) by and between California Processors and Growers, Inc., as collective bargaining agent for and on behalf of those canning companies, each of which is hereinafter called the Employer, and which by written statement attached to this agreement or specifically referring to this agreement, adopt this agreement and promise to be bound thereby, and the American Federation of Labor and California State Council of Cannery Unions, as collective bargaining agents for and on behalf of those Cannery Workers Unions, chartered by the American Federation of Labor, each of which is hereinafter called the Union, and which by written statement attached to this agreement or specifically referring to this agreement, adopt this agreement and promise to be bound thereby.

Witnesseth: That in consideration of the premises it is mutually agreed as follows:

Each and every, all and singular of the obligations and provisions of said collective bargaining

## Board's Exhibit No. 4—(Continued)

agreement dated June 10, 1941, as amended January 26, 1942, are hereby ratified and confirmed, without variation or modification of any kind or character, except as specified in the amendments hereinafter set forth and in the "Supplementary Emergency Agreement" of even date herewith.

Section 1. Recognition. The Employer through its representative, California Processors and Growers, Inc., hereby agrees to recognize the Union through its representatives, California State Council of Cannery Unions and the American Federation of Labor, as the sole agency representing its employees for the purpose of collective bargaining. There shall be no discrimination of any kind against any employees on account of union affiliation or on account of bona fide union activity of such persons.

Section 2. Operation of Agreement. In addition to the operation of this master contract as an agreement between the collective bargaining agents of the Employers and the Unions above described, this contract shall operate as a direct agreement between individual Employers and individual local Unions as to named canning plants and named local Unions, upon the execution of the attached forms of certificate setting forth the name of the Employer, the location of the plant, and the name and charter number of the Union concerned. The execution of such certificates shall bind the individual Employers and individual Unions mutually concerned, for the plants and for the membership of



## Board's Exhibit No. 4—(Continued)

the local Unions so named, as follows: The Employer will pay the wages herein specified and perform the agreements on its part as hereinafter set forth, and the Union, through its membership, will do the work herein described and perform the agreements on its part as hereinafter set forth, each without limitation or reservation except as expressed hereinafter.

Section 3. Preference of Employment and Hiring Practices.

(a) It is recognized that the refusal of Union members to work with non-union employees who are within the jurisdiction of the local Union shall not constitute a violation of this agreement, provided, however, that before any strike action, job action or other direct action is taken on this account, the local Union will submit the matter for adjustment as provided in Section 8 hereof. In order to aid in the prompt adjustment of such matters, the Union shall furnish its members with a clearance card, dues book or other evidence of paid-up membership, and when employees who are on the seniority lists, as defined in Section 9 hereof, are called to work, the Employer will request that such evidence be presented by those who have it, and will keep a record, which will be available to the Union, of all employees do not present such evidence. Similarly the Union will from time to time, when such information is available, notify the Employer of the names of delinquent or suspended members, or other non-union employees, according to Union records.

The Employer shall be the sole judge of the quali-

## Board's Exhibit No. 4—(Continued)

fications of all of its employees, subject to appeal as provided in Section 8 hereof, but in the selection of new employees the Employer will give preference of employment to unemployed members of the local union, provided they have the necessary qualifications and are available when new employees are to be hired. "New Employees", for the purpose of this agreement, are defined to be persons who are not on the seniority list of the hiring plant, as defined in Section 9 hereof, even though they may have been employed previously by said plant. As a basis for preferential consideration as new employees as aforesaid, unemployed members of the local union shall be required to present a clearance card from the local union evidencing the fact of their paid-up membership. [If such union members are not available for such employment, the Employer may hire any person not a member of the Union provided that such person will be required to file an application for membership in the local union before being put to work. Upon filing such application he shall receive from the Union a written statement that he has made such application, which statement shall be taken up by the Employer and returned to the Union when the applicant is put to work. It is further understood that such person must become a member of the local union within ten (10) days after his employment, and that the local union will not unreasonably refuse to accept such person as a member]<sup>1</sup>

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<sup>1</sup>Matter in brackets is modified by Section 1 of the Supplementary Emergency Agreement. See Page 35.

Board's Exhibit No. 4—(Continued)

(b) The following rules and practices shall govern in carrying out the foregoing provisions of this Section relating to preferential employment and to hiring new employees:

(1) A central authority, responsible for hiring and firing, shall be established and maintained in each plant of the employer which, under Section 2 hereof, is subject to the provisions of this agreement. Such plants shall be known as "member plants". Each member plant shall furnish the appropriate local union and the California Processors and Growers, Inc., with the name of the person assigned by such member plant to the responsibility of acting as such central authority.

The person assigned to the responsibility of acting as such central authority shall have full authority for hiring and firing and shall be available at all proper times to carry out the purposes of this agreement, and the Employer agrees that the person so assigned shall not have conflicting duties which will interfere with his availability.

(2) At the beginning of the operating season for processing perishable products, whether fruits or vegetables, and upon the resumption of operations during such operating season after any shut down lasting two weeks or more, the respective member plants of the Employer will give the local union office writ-

## Board's Exhibit No. 4—(Continued)

ten notice of beginning or resuming operation equivalent in time to that given to registered workers on the seniority list of such plants, and at least 48 hours before such operations start, provided such information is available to the Employer in time to fulfill this requirement. In case of a shut down of less than two weeks, the local union office will be given the same length of notice of resumption of work as that given to employees of the plant concerned. Information concerning the probable or actual termination of any operating season, and of shut downs for substantial periods of time during such season, will be furnished to the local Union by the Employer when and to the extent that such information is available. In the event that an Employer gives notice that no further processing operations are to be undertaken after the completion of operations on any particular product in a given season, and employees are thereafter laid off for lack of work, any such employees having seniority who are subsequently recalled to work in said plant during said season on account of the resumption of processing operations, and who fail to report, shall not lose their seniority rights as provided in 9 (h) hereof, but shall be deemed to have a reasonable excuse for such failure to report.

(3) During the operating season, and at the beginning of each work shift or day, the local

## Board's Exhibit No. 4—(Continued)

union undertakes to have available, at member plant subject to this agreement, sufficient qualified members of the appropriate local union to fill normal vacancies. If such members are not available at such plants, other persons may be hired as herein provided.

(4) During any day or shift, if there is an increase in volume of work which necessitates the hiring of five or more additional employees, the local union will be given at least two hours' notice of such need, to enable said union to make available sufficient qualified local union members, before other persons are hired as herein provided. To aid in the practical application of this provision and to avoid unnecessary calls at night, the local union will furnish the appropriate central hiring authority, in plants operating night shifts, with a list of currently available local union members whenever possible to do so.

The foregoing procedure shall apply during the operating season for processing perishable products, whether fruits or vegetables, and shall likewise apply during the non-processing season with the exception that during such portion of the year the procedure shall apply to the hiring of any or all additional employees, rather than to "five or more additional employees" as provided during the processing season.

## Board's Exhibit No. 4—(Continued)

(5) Each local union will provide a practical method for receiving notices herein provided, and Employer will be released from obligation under these rules if notice is given but not availed of by the local union concerned, or if no one is reasonably available to receive notice.

(6) When hiring "new employees" (as defined in Section 3 (a) hereof) if qualified members of the appropriate local union are not available, the Employer will require applicants for work to follow the procedure described in Section 3 (a) hereof before being put to work, and will advise such applicants of the provision of this Section requiring affiliation with said union within ten (10) days after actual employment. The local union agrees to have a representative available for receiving union applications at times designated by the member plant central hiring authority for employing new workers, and the local union agrees to assume responsibility for completing the matter of subsequent affiliation by such new workers as members of the Union.

\* \* \*

Section 8. Adjustment of Grievances. Grievances arising in any plant covered by this contract will be reported in writing to the shop committee and/or local business agent. If no satisfactory settlement can be reached with the plant management, the Union, through its Executive Board, will turn over the matter to the Adjustment Board hereinafter provided.

## Board's Exhibit No. 4—(Continued)

The Employer shall have an equal right to present grievances to the Shop Committee, and/or local business agent, and if adjustment through the local union fails, to present any unsettled matters to the Central Adjustment Board.

A Central Adjustment Board will be set up promptly with the signing of this agreement. The members of this Board will be composed of six (6) Business Agents to be elected by the California State Council of Cannery Unions, four (4) of which are to be regulars and two (2) to act as alternates. There shall be at least one (1) woman union representative serving on the Adjustment Board at all times. The California Processors and Growers, Inc., will set up a committee of like number to act with the Union committee. Any disputes or grievances that are referred to it as herein provided shall be decided by the Central Adjustment Board, and the decision of that Board shall be final and binding on all parties concerned. The Adjustment Board must meet within three (3) days after being notified. In the event that this committee becomes deadlocked within three (3) days after meeting, then an outside person, mutually satisfactory, shall be called in to make the final decision. In any event, a final decision shall be made within nine (9) days after the original reference.

Nothing in this agreement shall be deemed to limit the right of the Employer to discharge an employee for cause, provided, however, that if an employee

## Board's Exhibit No. 4—(Continued)

claims to have been unjustly discharged, suspended or discriminated against in any manner during the life of this agreement his or her case shall be taken up by the employee with the Shop Committee and/or Business Agent within twenty-four (24) hours. If upon investigation the matter is not thus disposed of, the case may be referred to the executive committee of the Union, and an official of the Company; provided that written notice of such appeal shall be delivered forthwith by the appealing party to the other party. If these parties are unable to agree, the case may be appealed within forty-eight (48) hours after notice is given to the employee that no adjustment has been made. The appeal shall be to the Adjustment Board hereinabove provided for in the same manner and with the same effect as set forth for the adjustment of other matters provided in this section. In case a discharge is found to be unjustifiable by the Adjustment Board, the Board may order payment for lost time or reinstatement with or without payment for lost time. In cases of demotion and discharge of employees on the seniority lists for lack of qualifications or ability to perform a job, the Employer will notify the Union before action is taken, whenever time and circumstances permit.

In addition to the power to adjust grievances referred to it by local unions or the Employer as hereinabove provided, and the determination of appeals in cases of contested discharge, the Adjustment Board shall have the power and responsibility to investigate and determine all matters arising under



## Board's Exhibit No. 4—(Continued)

Section 3 (a) hereof relating to the refusal of union members to work with non-union employees. In all such cases notice of the existence and nature of such dispute shall be submitted in writing to California Processors and Growers, Inc., by the local union, in addition to presentation to the Shop Committee and/or local business agent as hereinabove provided.

The specific provisions of this section shall not be construed to limit the kind of grievances that may be submitted for adjustment, nor shall the provisions of Section 15 (d) hereof be construed as a limitation of power.

In addition to meetings called to consider specific disputes as herein provided, the Central Adjustment Board shall meet at least once a month, or at other times determined by mutual agreement of the members thereof, for the purpose of considering any matters, in addition to the adjustment of grievances presented by any party hereto, that may relate to the interpretation or administration of the provisions of this agreement. All decisions of said Board in adjusting grievances, and all determinations of said Board relating to the interpretation or administration of this agreement shall be reduced to writing and shall be sent to each local union and to each Employer, party to this agreement. Adjustments or interpretations made in settlement of local disputes prior to submission to the Board shall not be binding upon the Central Board, but any adjustment or interpretation made by the Central Board shall be binding on all parties hereto.

## Board's Exhibit No. 4—(Continued)

Nothing in this section shall be construed to empower the Central Adjustment Board to change, modify or amend the provisions of this agreement.

It is further understood that no member of the Central Adjustment Board will act as a Board member in cases concerning his own company, or his own local union, as the case may be.

Any expense voted by this Board will be borne equally by both parties to this agreement.

Pending decision of this Board, there shall be no cessation of work by the employees.

## Section 9. Seniority.

(a) A seniority list shall be prepared for each plant, party to this agreement, and said list shall be prepared and presented to the appropriate local union within thirty (30) days after the signing of this agreement and thereafter said list shall be prepared and submitted to said Union within 30 days after the effective date of the contract in each succeeding year. Upon submission of said list to the local union, a copy or copies shall be posted by the Employer in a conspicuous place in the cannery concerned for inspection by employees, together with a notice that any requests for correction or modification of said list by employees or the local union must be made within a specified period of time. Such period of time, and similar periods for subsequent determination of seasonal lists, shall be fixed by mutual agreement between the Employer and the local union, or if no agreement is reached, by the Central Adjust-

## Board's Exhibit No. 4—(Continued)

ment Board. After such notice, and the expiration of said period, no requests for change or modification of said lists will be considered. Said list shall be based on the beginning date, as accurately as can be determined, of continuous regular employment or consecutive seasonal employment, as the case may be, as such employment is hereinafter defined. All employees covered by this agreement and referred to in Section 4 (a) hereof shall be named on said list.

(b) All jobs shall be filled and all rehiring shall be from the regular list in the order of seniority, and thereafter all vacancies in positions of regular and seasonal employment shall be filled from the seasonal list in the same order, provided that the person or persons having seniority are capable of performing in a manner satisfactory to the Employer the work which is available, provided, however, that a right of appeal shall exist as provided in Section 8 hereof. Similarly, lay-offs for lack of work shall be made in the reverse order of seniority, due consideration being given to the ability of the employee laid off and of the remaining employees to perform the work available in a manner satisfactory to the Employer, subject to the right of appeal as provided in Section 8 hereof.

In hiring new employees, the procedure and preferences provided in Section 3 hereof shall be followed, with the understanding that after the provisions of said Section 3 have been fulfilled, local residents will be given prior consideration in new employment.

## Board's Exhibit No. 4—(Continued)

(c) The relative position of said workers on said list in the respective groups hereinafter described shall be determined by length of service computed in the manner herein set forth.

(d) In each plant employees shall be divided in two (2) groups as follows: Regular employees and seasonal employees, all to be listed on one seniority roster for said plant.

(e) Regular employees are those who have worked in a given plant at least forty (40) weeks out of the fifty-two (52) weeks during the preceding calendar year.

Seasonal employees are those other than regular employees, who worked in a given plant at least sixty per cent (60%) of the total number of operating days of said plant during the previous season.

An operating day is hereby defined as either any day during which perishable products are being processed when not less than twenty per cent (20%) of the average number of employees on the plant payroll during the week of greatest employment during the season are at work, or any day during which not less than twenty per cent (20%) of the average total daily payroll during the week of greatest employment during the season is paid out.

(f) Any person on the regular or seasonal seniority list of a given plant at the beginning of the 1940 season shall be entitled to credit for prior service for seniority purposes on the following basis:

(1) For regular employees: one year's

## Board's Exhibit No. 4—(Continued)

credit for each consecutive year prior to 1940, back to and including 1937, during which such employee worked forty (40) weeks or more in such plant during a calendar year; and one year's credit for each consecutive year prior to 1937 that such employee worked any portion of a calendar year in such plant.

(2) For seasonal employees: one year's credit for each consecutive year prior to 1940, back to and including 1937, during which such employee worked sixty per cent (60%) of the total actual operating days in such plant during a calendar year, as defined in the 1940 agreement; and one year's credit for each consecutive year prior to 1937 that such employee worked any portion of a calendar year in such plant.

Absence from the plant payroll for a total calendar year, except as provided in Section 9 (i) hereof, shall prevent the crediting of that year or any prior year for purposes of seniority hereunder.

Any employee, whether regular or seasonal, who was on the seniority list of a given plant at the beginning of the 1940 season shall not thereafter lose his or her seniority status for failure to qualify by working forty (40) weeks, if a regular, or sixty per cent (60%) of the operating days as herein defined, if a seasonal worker, provided such failure is due to lack of available work, which such worker is qualified to perform, unless such employee shall be off the payroll

## Board's Exhibit No. 4—(Continued)

of such plant for a total calendar year, or has been on the payroll of such plant for two consecutive years but without qualifying for seniority in either year. In the event any employee fails to qualify in a given year, but thereafter does qualify for seniority as herein provided, such employee upon such subsequent qualification shall be entitled to credit for the intervening year or years as herein specified, but not to exceed two consecutive years.

If a regular employee loses his place on the regular seniority list in the manner hereinabove set forth, he may claim a place on the seasonal list, not later than the following year, and will take his appropriate relative place on that list in accordance with his seasonal seniority. If a seasonal employee gains a place on the regular list by qualifying length of employment, he shall not lose his seniority rating on the seasonal list, but may reclaim this seasonal standing if laid off for lack of work as a regular employee.

(g) Any employee discharged for cause, or voluntarily quitting his or her employment, except in the case of layoff for lack of work, or leave of absence with written consent, as provided in Section 9 (i), shall lose all seniority rights.

(h) Any person on the seniority list who is reasonably notified to report for work, and who fails to do so within a period of forty-eight (48) hours shall lose all seniority rights, provided, however, that if said failure to report was excusable for reasons satisfactory to the Union and the Employer, such person

## Board's Exhibit No. 4—(Continued)

shall lose only the immediate employment offered and shall be continued in his or her relative place on the seniority list. The employer will furnish the local union with a list of the persons who have failed to report for work after notification.

(i) When employees in plants covered by this contract are obliged to leave their cannery jobs because of acceptance by them of official positions with the Union, their seniority shall not be lost during such absence, but shall accumulate during such period in the same manner as if they remained employed in the status held by them before leaving, provided, however, that upon termination of their union position they notify the Employer within 30 days of such termination and shall then be eligible for reinstatement in accordance with the provision of Section 9

(b) hereof. All present officials of local unions, parties to this contract, shall be protected in their seniority status retroactively to cover the period of their incumbency as such union officials. Leaves of absence without loss of seniority for any other cause shall be granted only with the written approval of both Employer and the Union. Leaves of absence shall be granted for just cause, and approval shall not be withheld arbitrarily by the Employer or the Union. These provisions requiring written leave of absence shall not apply to absences, granted by the Employer for sickness or similar reasons, of less than ten (10) days duration.

(j) Notwithstanding the provisions of this section relating to seniority, when it is necessary to em-

## Board's Exhibit No. 4—(Continued)

ploy persons to perform supervisory duties or duties requiring special training or experience, and in the Employer's judgment it is necessary to select a person regardless of seniority to fill such position, such person may be employed and assigned to any place of employment without regard to the seniority list, provided he is compensated at a wage higher than the minimum wage established for Bracket IV herein. Such employees shall receive such wage for any duties performed by them, whether in lower classification or not, so long as they are separately listed and employed without regard to the seniority list as herein provided. If persons named to such positions have a seniority rating based on prior service, they shall not lose said rating by reason of being separately listed, but may reclaim their seniority standing if laid off for lack of work on the type of assignment described herein. If such persons have no seniority rating based on prior service, however, they shall gain no seniority rights by reason of their employment under the provisions of this section. A copy of the lists of all such employees shall be furnished to the local union concerned, to the California State Council of Cannery Unions and to the California Processors and Growers, Inc. The Employer's judgment shall not be exercised arbitrarily, and any disputes arising hereunder shall be referred to the Central Adjustment Board as provided in Section 8 hereof.

(k) Any modifications to Section 9 shall be by mutual consent of the local union and an employer-canner party of this agreement. Any such modifica-



## Board's Exhibit No. 4—(Continued)

tion shall be reduced to writing and a copy filed with the California Processors and Growers, Inc., and with the California State Council of Cannery Unions.

## Section 10. Students.

When an employer desires to put persons to work for the purpose of training them in a cannery job and not for the purpose of having them become permanent employees at such job, he may, without regard to the principle of seniority, put such persons to work, but there shall not be more than one (1) such person per two hundred (200) employees or fraction thereof. Students will not be admitted to union membership and shall gain no seniority rights. The application of this section by the Employer shall be subject to review by the Adjustment Board as provided in Section 8 hereof. A list of students shall be furnished to the local union.

## Section 11. Visits by Union Officials.

The Employer agrees to admit to its plant at all reasonable times any authorized representative, or representatives, of the Union for the purpose of ascertaining whether or not this agreement is being observed by the parties hereto, and to assist in adjusting grievances. A duly authorized agent of the local union will be permitted to collect dues in the plant, and the Employer hereby agrees to cooperate in arranging for visits for this purpose, to provide a suitable place for receiving dues, and to name two (2) persons in the plant, each of whom shall have authority to make arrangements for such visits.

## Board's Exhibit No. 4—(Continued)

These privileges shall be so exercised that no time is lost unnecessarily to the Employer, and the Union representatives shall advise Employer of such visits by notifying the plant office before or at the time of entering the plant. The privileges herein granted may be suspended for any willful violation of the provisions of this section, and such violation may be referred to the Adjustment Board as provided in Section 8.

## Section 12. Vacation Period.

Any employee who has been on the payroll of a company for forty (40) weeks and has worked sixteen hundred (1600) straight time hours, or more, during the current period of twelve (12) consecutive months from and after the date or anniversary date of his employment shall receive one (1) week's vacation with pay, said vacation period to be taken prior to the beginning of the next processing season, or at other times by mutual consent. Vacation pay shall be based on a forty (40) hour work week at straight time.<sup>5</sup>

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<sup>5</sup>“The current union agreement provides (Section 12) that ‘Vacation pay shall be based on a forty (40) hour week at straight time.’ This language contemplates that such vacation pay should be the normal straight time compensation of the individual concerned, and consequently, when a worker has been assigned to more than one classification and received different rates of pay during the qualifying period, his vacation rate should be his average straight time rate over such period, rather than that in effect immediately prior to the vacation.”—Central Adjustment Board Ruling 5/15/42.

## Board's Exhibit No. 4—(Continued)

## Section 13. Compliance.

In the event of a violation of any part of the agreement by an employer, party to this agreement, such violation shall be immediately brought before the Central Adjusting Board, herein provided for, and the ruling handed down by said Board and/or ninth disinterested person, if such person is required, shall be final and binding upon the parties. If such employer does not abide by that ruling it shall then be necessary for the California Processors and Growers, Inc., to immediately suspend that employer from that Association and no assistance will be given him by that body against the action deemed advisable and necessary by the Union, because of the refusal of the employer to accept the ruling handed down by the Central Adjustment Board and/or the ninth disinterested person, if such person is called into the case.

Likewise, in the event of a violation of any part of this agreement by the individual union in the plant or plants of the Employer, such violation will be immediately brought before the Central Adjustment Board, provided herein, and the ruling handed down by such Board and/or disinterested party shall be final and binding upon the parties. If such individual union refuses to abide by the ruling handed down, it shall then be necessary to immediately recommend to the American Federation of Labor that that individual union shall not receive official

## Board's Exhibit No. 4—(Continued)

recognition from the American Federation of Labor and the California State Council of Cannery Unions, and thereby prevent that individual union from receiving any assistance from those bodies until such time as the individual union agrees to comply with the ruling handed down by the Central Adjustment Board and/or the ninth disinterested person.

## Section 14. Conflicting Agreements.

In the event that the American Federation of Labor or the California State Council of Cannery Unions, or any of the local unions, parties hereto, make any agreement with any employer, within the jurisdiction of any individual local union, party to this agreement, as such jurisdiction now exists, the Employer hereunder shall be entitled, within the area included under the jurisdiction of any local union which is a party hereto, to the benefit of any terms contained in such agreement which may be more favorable to the Employer thereunder than those set forth herein, notwithstanding the provisions of this contract. A copy of all such agreements shall be filed with the California State Council of Cannery Unions, and the California Processors and Growers, Inc., at the time they become effective.

\* \* \*

## Board's Exhibit No. 4—(Continued)

## Section 18. Term of Agreement.

The term of this agreement shall be until March 1, 1945, provided, however, that either party may, by written notice given fifteen (15) days prior to December 31, 1943, or fifteen (15) days prior to December 31st of any subsequent year during the life of this agreement, reopen the same for the adjustment of wages, hours, and working conditions. Any changes desired shall be reduced to writing and delivered to the other party prior to, and negotiations must start not later than, the first business day in January next following receipt of such written notice and such negotiations must be completed before March 1st of same year. In the event that this agreement shall not have been modified previously, and in the event that no notice shall be given by either party to the other, as hereinabove provided, then the terms of this agreement shall automatically be extended for an additional period of one (1) year, and thereafter shall automatically be extended from year to year unless one of the parties shall give notice to the other of a desire to modify said agreement, at least fifteen (15) days prior to December 31st in any following year of the life of this agreement. In the event that such notice is given prior to December 31st as hereinabove provided, and negotiations are begun, the terms of the agreement as of the date of such notice shall remain in full force and effect during and until the following March 1st, and if negotiations continue beyond such date by mutual agreement, any agreement reached thereafter shall be

Board's Exhibit No. 4—(Continued)  
effective retroactively to said March 1st. In the event no agreement is reached by said March 1st, however, either party may give notice to the other of the termination of negotiations and thereby cancel said negotiations and this agreement.

In Witness Whereof the parties hereto have set their hands and seals this 10th day of July, 1943.

CALIFORNIA PROCESSORS  
AND GROWERS, INC.

By L. E. NEEL,  
President.

WILLIAM E. YEOMANS,  
Secretary.

CALIFORNIA STATE  
COUNCIL OF CANNERY  
UNIONS

By L. J. HILL,  
President,  
HAL P. ANGUS,  
Secretary.

Witnesses:

OMAR HOSKINS,  
U. S. Commissioner of  
Conciliation.

GEORGE L. GOOGE,  
Special Representative of American Federation of  
Labor.

J. PAUL ST. SURE,  
Attorney for California Processors and Growers,  
Inc.

Board's Exhibit No. 4—(Continued)

Additional Wage Provisions.

\* \* \*

4. The provisions set forth herein shall be effective as of March 1, 1943, as a master contract and shall operate as a direct agreement between individual employers and individual local unions as to named plants and unions upon the execution of certificates in the manner and form as set forth in Section 2 of the collective bargaining agreement of June 10, 1941, and shall continue in full force and effect thereafter in accordance with the provisions of Section 18 of the collective bargaining agreement.

5. It is expressly understood that in the event war-time conditions or restrictions result to the canning industry by governmental order or action, whether directly or indirectly, so as to interfere with or interrupt the normal operations of the canneries covered by this agreement or the normal conditions of work in such canneries, then, notwithstanding the provisions of the collective bargaining agreement herein described, the Employer shall not be liable for any penalty or default during or as a result of such interference, interruption or restriction and similarly, the employees of the Union shall not be liable for any additional obligation to the Employer during or as a result of such interference, interruption or restriction. It is the intent of the parties hereto to provide an express waiver of contractual penalties to accomplish a mutual assumption of losses of time and production resulting from such

## Board's Exhibit No. 4—(Continued)

government orders or actions, and it is further agreed that all reasonable efforts will be made to reach a mutual understanding as to any unforeseen operating or working problems that may result from other war-time conditions not covered by this waiver.

In Witness Whereof the parties hereto have set their hands and seals this 10th day of July, 1943.

CALIFORNIA STATE  
COUNCIL OF CANNERY  
UNIONS

By L. J. HILL,  
President.

HAL P. ANGUS,  
Secretary.

CALIFORNIA PROCESSORS  
AND GROWERS, INC.

By WILLIAM E. YEOMANS,  
Secretary.

Supplementary Emergency Agreement

This memorandum of agreement made and entered into this 10th day of July, 1943, by and between California Processors and Growers, Inc., as collective bargaining agent for those canning companies more particularly described in that certain collective bargaining agreement executed on the 10th day of June, 1941, as amended January 26,



## Board's Exhibit No. 4—(Continued)

1942, and The American Federation of Labor and California State Council of Cannery Unions, as collective bargaining agent for those cannery workers' unions more particularly described in said collective bargaining agreement,

Witnesseth: That in consideration of the premises it is mutually agreed as follows:

During the cannery operating season of 1943, in order to alleviate the critical manpower shortage existing in California and to promote the continued operation of canneries and the essential production of food, the following emergency provision shall be in effect as modifications of the collective bargaining agreement executed this day:

1. The final three sentences of the second paragraph of Section 3 (a) are amended to read as follows:

“If such union members are not available for such employment, the Employer may hire any person not a member of the Union provided that such person will be required to file an application for membership in the local union or obtain an ‘Emergency’ card from the local union before being put to work. An emergency worker shall not be required to complete his affiliation with the local union except as hereinafter provided, but shall have the right to do so at any time if he so desires, in which event any payments therefore made to the Union by such emergency worker shall be credited by the Union as payment on account of the regular

## Board's Exhibit No. 4—(Continued)

initiation fee of such person. An emergency worker shall not acquire seniority rights and shall not continue his status as an emergency worker beyond the period of the operating season. If an emergency worker completes his affiliation with the Union, he shall acquire seniority from the date of original employment. Upon filing application for union membership, or obtaining an emergency card, the person to be employed shall receive from the Union a written statement evidencing the fact, which statement shall be taken up by the Employer and returned to the Union when the person is put to work. It is further understood that emergency workers shall obtain renewals of their status from week to week, and that persons filing applications for membership in the local union shall complete their affiliation within ten (10) days after employment. The local union agrees that it will not unreasonably refuse to grant emergency status to any person; and that it will not unreasonably refuse to accept any applicant as a member."

2. It is further understood and agreed that the following provisions shall govern emergency workers during the 1943 cannery operating season:

New employees will be required to present a clearance from the Union before being put to

## Board's Exhibit No. 4—(Continued)

work. In the case of applicants for regular union membership, the regular contract provisions will apply.

In the case of emergency workers, such workers will be required to present a receipt showing advance payment of 50c to cover the current week. Such receipt should indicate that no refund will be made if the employee works less than one week. The union undertakes to issue these 50c receipts at times when new employees are being hired, as now provided for clearances in the case of applicants for membership.

At the time of employment of emergency workers, such workers will be informed by the Employer that the contract provides that they must obtain new receipts from week to week.

After the initial employment of emergency workers, the Employer will undertake to investigate their status, week by week, to ascertain whether or not they have a receipt for the current week's fee, paid in advance. In order to facilitate the making of this investigation, the Union should furnish the Employer, at least once a week, a list of all emergency workers who have made the required payment for the current week, and a list of those who have failed to do so.

The employers will not provide a check off of weekly payments, nor undertake to make col-

## Board's Exhibit No. 4—(Continued)

lections, but they will observe in good faith the requirement that emergency workers must obtain renewals of their status from week to week in order to continue at work.

The specific details of receipt forms and agreements as to dates for securing lists shall be worked out locally, and if any disputes arise, they shall be submitted to the special committee hereinafter provided.

Present or former union members will not be qualified to come within the category of emergency workers, but other new employees shall have the option of becoming either regular members or emergency workers, provided, however, that after working twenty-four (24) days, or after working all regular shifts whenever work is available for four (4) payroll periods (whichever is the lesser total of working days) emergency workers will be deemed to be in the same category as other cannery workers and will be required to become members of the Union, unless they are employed elsewhere and are doing cannery work in addition to their regular employment.

Members of the armed forces shall be exempt from the payment of any fees or dues, it being understood that members of the armed forces may be employed in cases where there is a mutual determination that a shortage of civilian workers exists, but only when their employ-

## Board's Exhibit No. 4—(Continued)

ment will not interfere with the customary employment and regular engagement of civilians.

3. It is further understood and agreed that in order to further the purposes and administration of this Supplementary Emergency Agreement, a Special Committee is hereby established as follows:

A Special Comitmttee composed of (1) the representatives of The American Federation of Labor assigned by President William Green to assist California cannery workers' unions, (2) the Secretary-Treasurer of the California State Council of Cannery Unions, (3) the labor relations counsel of the California Processors and Growers, Inc., and (4) the Secretary of the California Processors and Growers, Inc., shall function during the 1943 cannery operating season. If any differences arise concerning the operation or administration of the provisions of this Supplementary Emergency Agreement, or if any manpower emergencies arise which threaten the continued operation of the canneries during the term of said agreement, such differences and such emergency problems, at the request of either party hereto, shall be referred to said Special Committee, and said committee shall have the responsibility and the exclusive authority to make all necessary adjust-

Board's Exhibit No. 4—(Continued)

ments or decisions to settle such differences or to meet such emergencies.

In Witness Whereof the parties hereto have set their hands and seals this 10th day of July, 1943.

CALIFORNIA PROCESSORS  
AND GROWERS, INC.

By L. E. NEEL,

President,

And WILLIAM E. YEOMANS,

Secretary.

CALIFORNIA STATE  
COUNCIL OF CANNERY  
UNIONS

By L. J. HILL,

President,

And HAL P. ANGUS,

Secretary.

Witnesses:

OMAR HOSKINS,

U. S. Commissioner of

Conciliation.

GEORGE L. GOOGE,

Special Representative of American Federation of  
Labor.

J. PAUL ST. SURE,

Attorney for California Processors and Growers,  
Inc.

## Board's Exhibit No. 4—(Continued)

This is to certify that A. F. of L. Cannery Workers Union, No....., .....County, California, hereby represents that a majority of the employees in ..... Plant of .....located at ....., are members of said union and individually for themselves and as a unit have designated said union as their representative for collective bargaining.

The said union hereby adopts that certain agreement made and entered into on the 10th day of July, 1943 by and between California Processors and Growers, Inc., for and on behalf of certain canning companies and The American Federation of Labor, and California State Council of Cannery Unions for and on behalf of certain cannery workers' unions, and promises to be bound thereby.

By authority of the Union.

## CANNERY WORKERS

UNION, .....COUNTY.....

NO.....

By .....

President.

By .....

Secretary.

Dated:....., 1943

## Board's Exhibit No. 4—(Continued)

This is to certify that upon the representation of Cannery Workers Union,..... County, No....., that a majority of the employees in..... Plant of ..... located at ..... are members of said union and have designated said union as their representative for collective bargaining, the undersigned hereby adopts that certain agreement made and entered into as of the 10th day of July, 1943 by and between California Processors and Growers, Inc., for and on behalf of certain canning companies and The American Federation of Labor and California State Council of Cannery Unions for and on behalf of certain cannery workers' unions, and promises to be bound thereby.

.....  
By .....  
Authorized Officer.

Dated:....., 1943.



[Endorsed]: No. 11693. United States Circuit Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. C. W. Hume Company and California Processors & Growers, Inc., Respondents. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A.F.L. and California State Council of Cannery Unions, A.F.L., Intervenors. Transcript of Record. Upon petition for enforcement of an order of the National Labor Relations Board.

Filed July 23, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.



No. 11,693

IN THE

United States Court of Appeals  
For the Ninth Circuit

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NATIONAL LABOR RELATIONS BOARD,

*Petitioner,*

vs.

G. W. HUME COMPANY,

*Respondent,*

and

INTERNATIONAL BROTHERHOOD OF TEAM-  
STERS, CHAUFFEURS, WAREHOUSEMEN  
AND HELPERS OF AMERICA, A.F.L.,  
and CALIFORNIA STATE COUNCIL OF  
CANNERY UNIONS, A.F.L.,

*Intervenors.*

On Petition for Enforcement of an Order of the  
National Labor Relations Board.

BRIEF FOR RESPONDENT, G. W. HUME COMPANY.

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*Attorneys for Respondent,*

*G. W. Hume Company.*



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No. 11,693

IN THE

**United States Court of Appeals  
For the Ninth Circuit**

---

NATIONAL LABOR RELATIONS BOARD,  
*Petitioner,*

vs.

G. W. HUME COMPANY,  
*Respondent,*  
and

INTERNATIONAL BROTHERHOOD OF TEAM-  
STERS, CHAUFFEURS, WAREHOUSEMEN  
AND HELPERS OF AMERICA, A.F.L.,  
and CALIFORNIA STATE COUNCIL OF  
CANNERY UNIONS, A.F.L.,  
*Intervenors.*

On Petition for Enforcement of an Order of the  
National Labor Relations Board.

**BRIEF FOR RESPONDENT, G. W. HUME COMPANY.**

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**I. STATEMENT OF JURISDICTION.**

Petitioner National Labor Relations Board has invoked the jurisdiction of this Court under Section 10 (e) of the National Labor Relations Act (49 Stat. 449, 29 U.S.C. 160 (e)), hereinafter called the Act.

Since the Board issued its Order on October 31, 1946, the Act has been amended by the Labor Management Relations Act of 1947. (Pub. L. No. 101, 80th Cong., 1st Sess., June 23, 1947, 29 U.S.C. A. Sec. 141 et seq. (1947 Supp.).)

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## II. STATEMENT OF THE CASE.

Two issues are involved in this proceeding.

For a number of years respondent had been a member of California Processors & Growers, Inc. (for convenience referred to hereinafter as the CP&G), an agency which served as the collective bargaining representative for respondent and a number of other canners operating in California's central valleys and the San Francisco Bay area. The collective bargaining contract negotiated in 1941 between the CP&G and certain organizations affiliated with the American Federation of Labor was commonly known as the "green book" contract. This was the agreement which, with amendments, was in effect at respondent's plant at Turlock, California, throughout the year 1945 when some of the incidents now before this Court occurred.

Operations under the "green book" contract were harmonious throughout the canning industry for a long period of time, until an unhappy jurisdictional conflict developed in 1945 in which the representation of the industry's 50,000 or more cannery workers became the stake. The conflict first appeared about



May, 1945, when a number of independent local organizations were established which sought to succeed to the existing AFL groups. Within a couple of months these independents virtually disappeared; their place, however, was taken by Food, Tobacco, Agricultural & Allied Workers Union (hereinafter referred to as FTA) a union affiliated with the CIO. Petitions for certification of representatives were filed with the Board, and during the fall of 1945 the jurisdictional conflict approached a climax. At respondent's plant the petition for certification of representatives was filed by FTA during the summer, and early in October the Board directed that an election be held throughout the industry-wide bargaining unit. The election of October, 1945, was subsequently determined by the Board to have been improperly conducted, due to the lack of adequate safeguards on the Board's part to insure a fair election, and the results were set aside as inconclusive on February 15, 1946. During the interval between the holding of the election and its formal invalidation by the Board the respondent, in response to a demand from the AFL union, dismissed 29 employees because they had been suspended from the AFL for non-payment of dues. The first question presented by this proceeding relates to the consequences flowing from these dismissals; if they were made pursuant to an obligation of respondent under the "green book" contract, they do not constitute a violation of Section 8 (3) of the Act and the order of the Board directing an award of back pay is without legal support.

On March 25, 1946, after the Board had set aside the results of its first election, respondent executed a brief memorandum with the AFL which specifically required that all present employees should become members of the union within ten days, and thereafter remain members in good standing, and that new employees should similarly affiliate within ten days of the commencement of their employment, and remain members, as a condition of continued employment. The Board contends that the execution of this memorandum violated the provisions of Section 8 (1) of the Act, solely because of the fact that the Board had not made a final disposition of the proceeding for certification of representatives. The validity of the March, 1946, memorandum under these circumstances, then, constitutes the second issue here before the Court.

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### III. THE FACTS.

The Board has set forth a rather full statement of the facts upon which the Trial Examiner based his Intermediate Report. To be sure, if we were analyzing the record for the purpose of making the initial resolution of conflicts, our summary would be materially different. However, that stage of the proceeding has been concluded, and the points of difference, in the main, which we could now make would not be of sufficient materiality to affect the ultimate result. We shall therefore make no amplification of the record beyond the factual summary stated by the Board.

#### IV. THE ALLEGED DISCRIMINATORY DISCHARGES.

As we have already noted, and as the Board states in its Brief, the issue with respect to the discharge of 29 employees designated in the Board order is whether these discharges were an obligation of respondent under the "green book" contract.<sup>1</sup>

The position of the respondent, and of the CP&G, during 1945 was that the "green book" contract made union membership a condition of employment only as to new employees. This view was stated publicly to respondent's employees by F. S. Clough, a representative of CP&G, in August, 1945. (R. 235.) The same view has also been taken by counsel for respondent and CP&G in oral argument to the Board and elsewhere, as pointed out by the Board at pages 29-30 of its Brief. The AFL, however, has at all times vigorously asserted to the contrary. Until the jurisdictional conflict developed in 1945 there was no reason for the conflicting legal interpretations to be resolved, for respondent's plant operated as a *de facto* closed shop. (R. 472-74.) When it became material for the AFL to insist upon the application of its interpretation of the contract it presented its demand to respondent, and on November 20 and 21, 1945, respondent acceded by dismissing the employees who had lost their good standing with the union. The issue thereby became moot. When respondent reverted to its original position in the spring of 1946 and offered to take back the delinquent employees the AFL re-

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<sup>1</sup>Section 3 of the "green book" contract is the principal contractual provision involved in this issue. For the convenience of the Court it is set forth in full in the Appendix attached hereto.

newed its earlier stand, and invoked the grievance procedure established by the “green book” contract. The failure of the union to secure the re-adoption of its views by respondent resulted from a break-down in the grievance procedure, rather than from a withdrawal of the union’s demands. We point out these facts not to imply that respondent has changed its position with respect to its interpretation of the legal obligations arising under the union security sections of the contract, but to show that the issue is purely one of legal construction of the “green book” rather than one of fact in determining the existence of an extra-contractual condition of employment.

The Board has advanced an extended argument in support of the view that the “green book” contract did not require seniority employees to maintain good standing with the AFL as a condition of employment. If the Board’s view prevails the discharges were in violation of Section 8(3) of the Act.

The AFL, on the other hand, argues with equal vigor that all employees—new and seniority—were obligated to maintain good standing with the union as a condition of their continued employment. The AFL points out that in the usual open shop contract a strike or work stoppage by the union to compel unionization is a break of the agreement. It is only in those cases where the employer is obligated by his contract to retain only union employees that the union has a right to exercise economic action to secure dismissal of non-union personnel. There are two ways in which this objective can be accomplished: one, by

the employer's assumption of the obligation to refuse employment to non-union people; the other, by the union's reservation of the right to refuse to work at a job with non-union employees. By either method the result would seem to be the same: the employer hires only persons in good standing with the union, or he risks a work stoppage by the union to secure dismissal of non-union personnel.

The two interpretations of the "green book" are fully explored by the Board, on the one hand, and by the AFL, on the other, and we will not add to the discussion in this Brief.

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#### **V. THE EXECUTION OF THE MEMORANDUM OF MARCH 25, 1946, DID NOT VIOLATE SECTION 8 (1) OF THE ACT.**

The Board found that the execution of the closed-shop memorandum on March 25, 1946, constituted a violation of Section 8 (1) on the part of respondent. It directs respondent to cease recognizing the AFL as exclusive bargaining representative until the AFL is certified by the Board, and orders respondent to cease discrimination against employees because of membership in any other union, thus requiring respondent to treat with all unions claiming to speak for any of the employees.

The Board's order on this issue, and similarly in numerous other cannery cases, rests upon an extension of a doctrine enunciated in its decision in *Matter of Midwest Piping & Supply Co., Inc.*, 63 NLRB 163.

Much of what we would argue is already before the Court in the Brief for Respondent filed in *NLRB v. Flotill Products, Inc.*, number 11,449 in this Court.<sup>2</sup>

**1. The Law Does Not Require Certification by the Board as a Condition Precedent to Bargaining.**

The normal collective bargaining relationship is initiated without the formality of a Board hearing and certification. In the usual case a union makes a showing to the employer sufficient to convince the employer that it has authority to speak for the employees, and from that point forward the bargaining relationship proceeds. If the union were required to go through a representation proceeding and an election before it could bargain with the employer the Board would be swamped with representation cases. No such folly was intended by the Act.

The Board itself recognizes that a contract with a union lacking a certification is perfectly valid if the union represented a majority at the time the contract was made. In fact, the Board will even presume that the union represented a majority, and will reject proof to the contrary. *Matter of Electro Metallurgical Company*, 72 N.L.R.B. 1396.

**2. The Board's Direction to Bargain with Several Unions is Contrary to Congressional Intent.**

The policy of the Act is to encourage bargaining with representatives of a majority of the employees within a unit. Of necessity this policy precludes a

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<sup>2</sup>Respondent is serving copies of the Flotill brief upon the parties to this proceeding at the time this Brief is served.

bargaining with two unions. The impossibility of a dual bargaining relationship was in the minds of the Congress at the time the Act was adopted, and the intent to outlaw it is plain. In discussing the majority rule features of Section 9 (a) of the Act the Report of the Senate Committee on Education and Labor (Senate Report No. 573, 74th Congress, 1st session) says, at page 13:

“The object of collective bargaining is the making of agreements that will stabilize business conditions and fix fair standards of working conditions. Since it is well nigh universally recognized that it is practically impossible to apply two or more sets of agreements to one unit of workers at the same time, or to apply the terms of one agreement to only a portion of the workers in a single unit, the making of agreements is impracticable in the absence of majority rule. And by long experience, majority rule has been discovered best for employers as well as employees. Workers have found it impossible to approach their employers in a friendly spirit if they remained divided among themselves. Employers likewise, where majority rule has been given a trial of reasonable duration, have found it more conducive to harmonious labor relations to negotiate with representatives chosen by the majority than with numerous warring factions.”

Again the House Committee on Labor (House of Representatives, Report No. 1147, 74th Congress, 1st session, at pages 20-21) makes the following observations on the principle of majority rule:

“The misleading propaganda directed against this principle has been incredible. The underlying purposes of the majority rule principle are simple and just. As has frequently been stated, collective bargaining is not an end in itself; it is a means to an end, and that end is the making of collective agreements stabilizing employment relations for a period of time, with results advantageous both to the worker and the employer. There cannot be two or more basic agreements applicable to workers in a given unit; this is virtually conceded on all sides. If the employer should fail to give equally advantageous terms to nonmembers of the labor organization negotiating the agreement, there would immediately result a marked increase in the membership of that labor organization. On the other hand, if better terms were given nonmembers, this would give rise to bitterness and strife, and a wholly unworkable arrangement whereby men performing comparable duties were paid according to different scales of wages and hours. Clearly then, there must be one basic scale, and it must apply to all.

“It would be undesirable if this basic scale should result from negotiation between the employer and unorganized individuals or a minority group, for the agreement probably would not command the assent of the majority and hence would not have the stability which is one of the chief advantages of collective bargaining. If, however, the company should undertake to deal with each group separately, there would result the conditions pointed out by the present National Labor Relations Board in its decision in



the Matter of Houde Engineering Corporation (1 N.L.R.B. 35 (Aug. 30, 1934)):

“ ‘It seems clear that the company’s policy of dealing first with one group and then with the other resulted, whether intentionally or not, in defeating the object of the statute. In the first place, the company’s policy inevitably produced a certain amount of rivalry, suspicion, and friction between the leaders of the committees. \* \* \* Secondly, the company’s policy, by enabling it to favor one organization at the expense of the other, and thus to check at will the growth of either organization, was calculated to confuse the employees, to make them uncertain which organization they should from time to time adhere to, and to maintain a permanent and artificial division in the ranks.’

“Speaking of the company’s suggested alternative that it deal with a composite committee made up of representatives of the two major conflicting groups, supplemented by other individual employees, the Board pointed out:

“ ‘This vision of an employer dealing with a divided committee and calling in individual employees to assist the company in arriving at a decision is certainly far from what section 7 (a) must have contemplated in guaranteeing the right of collective bargaining. But whether or not the workers’ representation by a composite committee would weaken their voice and confuse their counsels in negotiating with the employer, in the end whatever collective agreement might be reached would have to be satisfactory to the majority within the committee. Hence the majority representatives would still

control, and the only difference between this and the traditional method of bargaining with the majority alone would be that the suggestions of the minority would be advanced in the presence of the majority. The employer would ordinarily gain nothing from this arrangement if the two groups were united, and if they were not united he would gain only what he has no right to ask for, namely, dissension and rivalry. \* \* \* ”

The Act itself is plainly lacking in any declaration, either express or implied, that an employer should terminate an established exclusive recognition during pendency of a representation issue. And the Congress did not want the Board to attempt to write into the Act what Congress had omitted. The Senate Committee said:

“Sections 7 and 8. Rights of employees—Unfair Labor Practices.—

“These sections are designed to establish and protect the basic rights incidental to the practice of collective bargaining. At this juncture the committee wishes to emphasize two points. In the first place, the unfair labor practices under the purview of this bill are strictly limited to those enumerated in section 8. This is made clear by paragraph 8 of section 2, which provides that ‘The term “unfair labor practice” means any unfair labor practice listed in Section 8’, and by Section 10 (a) empowering the Board to prevent any unfair labor practice ‘listed in Section 8.’ Unlike the Federal Trade Commission Act, which deals somewhat analogously with unfair trade

practices, this bill is specific in its terms. *Neither the National Labor Relations Board nor the Courts are given any blanket authority to prohibit whatever labor practices that in their judgment are deemed to be unfair.* Secondly, as will be shown directly, the unfair labor practices listed in this bill are supported by a wealth of precedent in prior Federal Law.” (Report of Senate Committee on Education and Labor, *supra*, pp. 8-9. Italics added.)

### 3. The Courts Have Uniformly Frowned Upon the “Cease Bargaining” Doctrine.

#### (a) Consolidated Edison Company v. N.L.R.B.

The United States Supreme Court has passed upon an almost identical situation in *Consolidated Edison Company v. N. L. R. B.*, 305 U. S. 197, 83 L. ed. 126.

On May 5, 1937, a CIO union filed a charge with the Board alleging that Consolidated Edison Company was violating the Act in interfering with employee organization, and in supporting an AFL union. Between May 28, 1937, and June 16, 1937, the Company executed its first collective bargaining agreements with the AFL — contracts which for the first time recognized the AFL as the representative of its members, established wages and working conditions, and contained no-strike provisions. The proceeding initiated by the CIO was pending before the Board at the time these agreements were negotiated. Following a hearing to which the AFL was not made a party the Board issued an order which, among other provisions, found that the Company had not dominated or interfered with any labor organization, and

directed that the Company cease giving effect to its AFL contracts. The AFL union represented about 80 per cent of the employees eligible for membership in it. The Board sought to justify its order setting aside the AFL contracts on the ground that it would effectuate the policies of the Act, under Section 10 (c). On this issue the Court made this statement which is most significant here:

“Further, the Act gives no express authority to the Board to invalidate contracts with independent labor organizations. That authority, if it exists, must rest upon the provisions of § 10 (c). That section authorizes the Board, when it has found the employer guilty of unfair labor practices, to require him to desist from such practices ‘and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act.’ We think that this authority to order affirmative action does not go so far as to confer a punitive jurisdiction enabling the Board to inflict upon the employer any penalty it may choose because he is engaged in unfair labor practices, even though the Board be of the opinion that the policies of the Act might be effectuated by such an order.” (305 U.S. at pp. 235-36; 83 L. ed. 143.)

The Court goes on to indicate that a majority once established and recognized by the employer retains its standing until another agency supplants it in the manner set out in the Act.

“The Board by its order did not direct an election to ascertain who should represent the em-

ployees for collective bargaining. Section 9 (c). Upon this record, there is nothing to show that the employees' selection as indicated by the Brotherhood contracts has been superseded by any other selection by a majority of employees of the companies so as to create an exclusive agency for bargaining under the statute, and in the absence of such an exclusive agency the employees represented by the Brotherhood, even if they were a minority, clearly had the right to make their own choice. Moreover, the fundamental purpose of the Act is to protect interstate and foreign commerce from interruptions and obstructions caused by industrial strife. This purpose appears to be served by these contracts in an important degree. Representing such a large percentage of the employees of the companies, and precluding strikes and providing for the arbitration of disputes, these agreements are highly protective to interstate and foreign commerce. They contain no terms which can be said to 'affect commerce' in the sense of the Act so as to justify their abrogation by the Board. *The disruption of these contracts, even pending proceedings to ascertain by an election the wishes of the majority of employees, would remove that salutary protection during the intervening period.*

"We conclude that the Board was without authority to require the petitioning companies to desist from giving effect to the Brotherhood contracts, as provided in subdivision (f) of paragraph one of the Board's order.

"Subdivision (g) of that paragraph, requiring the companies to cease recognizing the Brother-

hood 'as the exclusive representative of their employees' stand on a different footing. The contracts do not claim for the Brotherhood exclusive representation of the companies' employees but only representation of those who are its members, and the continued operation of the contracts is necessarily subject to the provision of the law by which representatives of the employees for the purpose of collective bargaining can be ascertained in case any question of 'representation' should arise. Section 9. We construe subdivision (g) as having no more effect than to provide that there shall be no interference with an exclusive bargaining agency if one other than the Brotherhood should be established in accordance with the provisions of the Act. So construed, that subdivision merely applies existing law." (305 U.S. 237, 238-39; 83 L. ed. 144, 145 (*Italics added.*))

The logic of the Supreme Court's decision is directly applicable here.

(b) *N.L.R.B. v. McGough Bakeries Corp.*

*N.L.R.B. v. McGough Bakeries Corp.*, 153 F. (2d) 420, involved a contest between a CIO union and an independent union. In 1942, at a time when the CIO was the only labor organization contesting for the right to represent employees, a strike had been called and to induce resumption of work the employer agreed to a closed-shop contract, with the CIO. Both the Board and the Circuit Court of Appeals determined that the closed-shop contract was invalid because the CIO was not shown to be the representative of a majority of the employees at the time it was made. Dur-

ing this period the Board declined to investigate the question of representation because only one union claimed bargaining rights.

The closed-shop agreement with the CIO was renewed on May 10, 1942, for a three year period. In February, 1943, some of the employees established an independent union and asked for bargaining privileges, claiming to represent a majority. The Company refused to negotiate with the Independent because of the outstanding closed-shop contract, and suggested that the Independent file a representation petition with the Board. Such a petition was filed by the Independent on March 5, 1943, but the CIO filed a charge that the Independent was company-dominated. The Board did not act on either petition. On May 15, 1943, after expiration of the CIO contract, the Independent and the Company commenced bargaining with the result that a closed-shop contract was signed with the Independent for the first time. Discharges made pursuant to the Independent's closed-shop contract served as the basis of a complaint issued by the Board.

The Board found that the Independent was company-dominated, made no finding as to whether the Independent represented a majority at the time its contract was signed in May, 1943, and applied the Midwest Piping doctrine, saying:

“However, on May 15, 1943, shortly after the expiration of the (CIO) Union's closed-shop contract, *notwithstanding the pendency of the aforementioned representation petition* and unfair la-

bor practice charge, the respondent, hastily and without requiring proof of the Independent's alleged majority status, entered into an illegal closed-shop contract with the Independent, as found in the Intermediate Report." (Italics added.)

58 *N.L.R.B.*, 848, 851.

The Circuit Court held that as a matter of law the record demonstrated that the Independent represented a majority of the employees at the time of its closed-shop contract in May, 1943, and that the record failed to show it to be company-dominated, stating:

"The trial examiner next brings forward the fact that the Independent was contracted with. *It had a right to be, since it was in fact the majority representative.*"

153 F. (2d) at 424.

The Board, at pages 19-20 of its Brief in the *Flotill* case (footnote 9), has anticipated our reference to the *McGough* case with the declaration that it "simply did not involve an adjudication of the validity of the doctrine of the instant case". On the contrary, the Board invoked the Midwest Piping doctrine, but the Court, although not making direct reference to it, upheld the questioned contract because it was made with a union entitled to speak for all the employees. Significantly, too, in the *McGough* case the action which the Board questioned and which occurred during the pendency of the representation issue consisted of an exclusive recognition by the employer and a closed-shop contract. With but a single act the em-



ployer gave the Independent virtually all that could be given to it.

The Board would have this Court ignore the pendency of the representation issue as a factor in the *McGough* case because “\* \* \* the Board did not thereafter act upon the petition because preliminary investigation indicated to it that the contracting union was illegally dominated. The unprocessed petition was regarded as having lapsed at the time the contract was entered into.” Careful reading of the Trial Examiner’s Intermediate Report, the Board’s Decision and Order (58 N.L.R.B. 848), and the Circuit Court’s opinion fails to show any basis whatsoever for these statements by the Board’s counsel in its briefs.

**4. Two Cases Decided by this Court are Contrary to the Board’s Decision in this Case.**

On at least two occasions this Court has declined to approve the “well established principle” invoked by the Board.

(a) *N.L.R.B. v. Pacific Greyhound Lines, Inc.*, 106 F. (2d), decided September 19, 1939.

In December, 1936, the Board had issued an order directing Pacific Greyhound to cease discouraging membership in the Brotherhood of Enginemen or any other labor organization, from encouraging membership in the Drivers Association or any other labor organization, and from otherwise dominating any labor organization or interfering with the rights of employees under the Act. The Board’s order was thereafter enforced by decree of this Court.

Upon entry of the decree both the Enginemen and the Drivers Association ceased to have any relations with Greyhound or its employees. At a time prior to April 21, 1937, a number of employees affiliated with the Amalgamated Association of Street, Electric Railway and Motor Coach Employees, and a collective bargaining agreement was executed by Amalgamated and Greyhound. On September 7, 1937, a new agreement was signed, to remain in effect until December 31, 1938. This provided for the exclusive recognition of the Amalgamated, and was self-renewing in the absence of 60 days' notice prior to December 31. At the same time it was agreed that within 30 days after approval of the arrangement by the members of Amalgamated and notice thereof to Greyhound, membership in the union would be required as a condition of employment. This arrangement became effective by agreement on April 15, 1938.

In June, 1938, a new union entered the picture, the Brotherhood of Railway Trainmen. The Trainmen and Amalgamated both filed petitions for certification with the Board, and, following a hearing, the Board issued a direction of election on October 29, 1938. Prior to the elections and on or before October 31, 1938, the closed-shop agreement was extended for an additional year and was modified so that it could be terminated by either Greyhound or the then bargaining agent for the men, Amalgamated, on 60 days' written notice from either party to the other.

The Board claimed that this modification constituted a violation of this Court's earlier decree, and

sought to have Greyhound adjudged in contempt. Greyhound moved to dismiss the Board's petition upon the ground that it did not set forth facts showing a violation of the decree. This Court granted Greyhound's motion, and on the subject of the effect of the pendency of the representation question upon the modification of the agreement in October, 1938, had this to say:

"We are unable to find in this modification of the agreement any justification for the Board's charge that it constituted a contempt of our decree or any violation of the Act. On the contrary, it seems in aid of the Act's declared purpose of a speedy disposition of labor disputes. *We regard the contract, as modified, then to be binding on the employees and on the company and not affected by the fact that undetermined proceedings were pending before the Board.* Consolidated Edison v. N.L.R.B., 305 U.S. 197, 237."

106 F. (2d) at p. 869. (Italics added.)

The Board asserts that the *Greyhound* case did not involve the Board's cease bargaining doctrine. A careful examination of the pleadings and briefs in that case discloses that the Greyhound Company argued that the law did not require it to cease bargaining collectively with the Amalgamated despite the pendency of the representation proceedings while the Board argued that to continue to bargain collectively with the Amalgamated during the pendency of the representation proceedings was contrary to law, and likewise contrary to the decree of this Court. This Court in dismissing the Board's petition held ex-

pressly in the language quoted above that it regarded the contracts as binding on the employees and on the company, and not affected by the fact that representation proceedings were pending before the Board, citing the *Consolidated* case. The cease bargaining doctrine, therefore, was considered and explicitly rejected by this Court in the *Greyhound* case.

(b) *N.L.R.B. v. Bercut-Richards Packing Co.*, C.C.A. 9, No. 9499, decided July 15, 1946.

On May 23, 1946, the Board filed with this Court in the above case its "Petition For Rule To Show Cause, To Adjudge In Contempt And For Other Relief". In sum the Board requested the Court to find that certain activities of the California Processors and Growers, Inc., its members and certain specifically named canners, principally the renewal and enforcement of their contract with its union shop provisions, violated a decree of the Court entered on July 15, 1940. The petition sets out at some length the conduct alleged to be a violation of the decree. It is sufficient for present purposes to say that the petition recites in detail the claim of the Board, which is the principal basis of the proceeding here before the Court, that during the pendency of the representation proceeding the employers could not without violating the law (and the decree) renew their contract with the AFL and continue to make it effective.

The respondents filed a lengthy return and answer to the Board's petition which related at considerable length the history of the relationship between respondents and the AFL, and which vigorously de-

fended the continuance of the bargaining relationship during the pendency of the representation issue. The AFL was granted leave to file a petition in intervention which raised the same issue.

The Board moved to strike the respondents' answer and asked for a summary adjudication on the pleadings, claiming that the admission of continued bargaining pending the representation issue constituted a minimum showing of a violation of the decree. (Board's Motion to Strike, etc. proceeding No. 9499, pages 9-10.) Briefs were filed in which the principal issue discussed was whether continued recognition of the AFL after March 1, 1946, while the representation question was unresolved, was a violation of the decree and the Act. (The parties treated the decree and the Act as coextensive for the purposes of that proceeding.)

On July 15, 1946, this Court denied, without opinion, the Board's petition to adjudge the respondents in contempt. The Board requested a clarification on July 23, 1946, upon the stated ground the Board could not determine whether the Court's action was intended to decide the legality of the execution of the 1946 contracts and thereby bar the Board from questioning these contracts in other proceedings then pending before the Board. The request for clarification was likewise denied.

Under these circumstances we take the dismissal of the contempt proceeding to be an adjudication on the merits, under Rule 41 (b) of the Federal Rules of

Civil Procedure which by rule of this Court have been made applicable.

“\* \* \* Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue, operates as an adjudication upon the merits.”

Compare

*Napa Valley Electric Company v. Railroad Commission*, 251 U. S. 366, 64 L. ed. 310;  
*Lyons v. Perrin & Gaff Manufacturing Co.*,  
 125 U. S. 698, 31 L. ed. 839.

By rule the presumption is thus conclusive and irrebuttable that the disposition of the contempt case constituted an adjudication of the validity of the 1946 contract between the AFL and other California canners, and that the continuance of negotiations while the Board attempts to dispose of a representation question does not violate the National Labor Relations Act. Because of the identity of the issues the contempt adjudication is a decision directly in point rejecting the Board's "cease bargaining" doctrine.

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#### CONCLUSION.

Inasmuch as respondent has already expressed for the record, as well as concurrently with the discharges involved in this order, the view that the "green book" contract did not require dismissal of non-union senior-

ity employees we do not now propose to do an about-face in our argument to the Court. The proper construction of that contract is a question of law for the Court to resolve, and the conflicting views are being stated by the Board and the AFL.

Respondent strenuously objects to that portion of the order which in effect requires it to attempt the impossible of bargaining on equal terms with all unions who may step forward with a claim on behalf of any of the employees within the bargaining unit. Such an order, we submit, is contrary to the intent of Congress, conflicts with decisions of this Court, and as a matter of law cannot "effectuate the policies of the Act."

Dated, Oakland, California,  
November 10, 1948.

Respectfully submitted,  
J. PAUL ST. SURE,  
EDWARD H. MOORE,  
*Attorneys for Respondent,*  
*G. W. Hume Company.*

**(Appendix Follows.)**





## **Appendix.**



## Appendix

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### SECTION 3. Preference of Employment and Hiring Practices.

(a) It is recognized that the refusal of Union members to work with non-union employees who are within the jurisdiction of the local Union shall not constitute a violation of this agreement, provided, however, that before any strike action, job action or other direct action is taken on this account, the local Union will submit the matter for adjustment as provided in Section 8 hereof. In order to aid in the prompt adjustment of such matters, the Union shall furnish its members with a clearance card, dues book or other evidence of paid-up membership, and when employees who are on the seniority lists, as defined in Section 9 hereof, are called to work, the Employer will request that such evidence be presented by those who have it, and will keep a record, which will be available to the Union, of all employees who do not present such evidence. Similarly the Union will from time to time, when such information is available, notify the Employer of the names of delinquent or suspended members, or other non-union employees, according to Union records.

The Employer shall be the sole judge of the qualifications of all of its employees, subject to appeal as provided in Section 8 hereof, but in the selection of new employees the Employer will give preference of employment to unemployed members of the local

union, provided they have the necessary qualifications and are available when new employees are to be hired. "New Employees", for the purpose of this agreement, are defined to be persons who are not on the seniority list of the hiring plant, as defined in Section 9 hereof, even though they may have been employed previously by said plant. As a basis for preferential consideration as new employees as aforesaid, unemployed members of the local union shall be required to present a clearance card from the local union evidencing the fact of their paid-up membership. [If such union members are not available for such employment, the Employer may hire any person not a member of the Union provided that such person will be required to file an application for membership in the local union before being put to work. Upon filing such application he shall receive from the Union a written statement that he has made such application, which statement shall be taken up by the Employer and returned to the Union when the applicant is put to work. It is further understood that such person must become a member of the local union within ten (10) days after his employment, and that the local union will not unreasonably refuse to accept such person as a member.]<sup>1</sup>

(b) The following rules and practices shall govern in carrying out the foregoing provisions of this Section relating to preferential employment and to hiring new employees:

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<sup>1</sup>Matter in brackets was modified by Section 1 of the Supplementary Emergency Agreement.

(1) A central authority, responsible for hiring and firing, shall be established and maintained in each plant of the employer which, under Section 2 hereof, is subject to the provisions of this agreement. Such plants shall be known as "member plants". Each member plant shall furnish the appropriate local union and the California Processors and Growers, Inc., with the name of the person assigned by such member plant to the responsibility of acting as such central authority.

The person assigned to the responsibility of acting as such central authority shall have full authority for hiring and firing and shall be available at all proper times to carry out the purposes of this agreement, and the Employer agrees that the person so assigned shall not have conflicting duties which will interfere with his availability.

(2) At the beginning of the operating season for processing perishable products, whether fruits or vegetables, and upon the resumption of operations during such operating season after any shut down lasting two weeks or more, the respective member plants of the Employer will give local union office written notice of beginning or resuming operation equivalent in time to that given to registered workers on the seniority list of such plants, and at least 48 hours before such operations start provided such information is available to the Employer in time to fulfill this requirement. In case of a shut down of less than two weeks, the local union office will be given the same length of notice of resumption of work as that given

to employees of the plant concerned. Information concerning the probable or actual termination of any operating season, and of shut downs for substantial periods of time during such season, will be furnished to the local Union by the Employer when and to the extent that such information is available. In the event that an Employer gives notice that no further processing operations are to be undertaken after the completion of operations on any particular product in a given season, and employees are thereafter laid off for lack of work, any such employees having seniority who are subsequently recalled to work in said plant during said season on account of the resumption of processing operations, and who fail to report, shall not lose their seniority rights as provided in 9 (h) hereof, but shall be deemed to have a reasonable excuse for such failure to report.

(3) During the operating season, and at the beginning of each work shift or day, the local union undertakes to have available, at member plant subject to this agreement, sufficient qualified members of the appropriate local union to fill normal vacancies. If such members are not available at such plants, other persons may be hired as herein provided.

(4) During any day or shift, if there is an increase in volume of work which necessitates the hiring of five or more additional employees, the local union will be given at least two hours' notice of such need, to enable said union to make available sufficient qualified local union members, before other persons are hired as

herein provided. To aid in the practical application of this provision and to avoid unnecessary calls at night, the local union will furnish the appropriate central hiring authority, in plants operating night shifts, with a list of currently available local union members whenever possible to do so.

The foregoing procedure shall apply during the operating season for processing perishable products, whether fruits or vegetables, and shall likewise apply during the non-processing season with the exception that during such portion of the year the procedure shall apply to the hiring of any or all additional employees, rather than to "five or more additional employees" as provided during the processing season.

(5) Each local union will provide a practical method for receiving notices herein provided, and Employer will be released from obligation under these rules if notice is given but not availed of by the local union concerned, or if no one is reasonably available to receive notice.

(6) When hiring "new employees" (as defined in Section 3 (a) hereof) if qualified members of the appropriate local union are not available, the Employer will require applicants for work to follow the procedure described in Section 3 (a) hereof before being put to work, and will advise such applicants of the provision of this Section requiring affiliation with said union within ten (10) days after actual employment. The local union agrees to have

a representative available for receiving union applications at times designated by the member plant central hiring authority for employing new workers, and the local union agrees to assume responsibility for completing the matter of subsequent affiliation by such new workers as members of the Union.



No. 11,693

IN THE  
United States Court of Appeals  
For the Ninth Circuit

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NATIONAL LABOR RELATIONS BOARD,  
*Petitioner,*  
vs.  
G. W. HUME COMPANY,  
*Respondent.*

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INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
CHAUFFEURS, WAREHOUSEMEN AND HELP-  
ERS OF AMERICA, A.F.L., and CALIFORNIA  
STATE COUNCIL OF CANNERY UNIONS,  
A.F.L.,  
*Plaintiffs in Intervention,*  
vs.  
NATIONAL LABOR RELATIONS BOARD,  
*Defendants in Intervention.*

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BRIEF FOR INTERVENORS.

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No. 11,693

IN THE

**United States Court of Appeals  
For the Ninth Circuit**

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NATIONAL LABOR RELATIONS BOARD,

*Petitioner,*

vs.

G. W. HUME COMPANY,

*Respondent.*

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
CHAUFFEURS, WAREHOUSEMEN AND HELP-  
ERS OF AMERICA, A.F.L., and CALIFORNIA  
STATE COUNCIL OF CANNERY UNIONS,  
A.F.L.,

*Plaintiffs in Intervention,*

vs.

NATIONAL LABOR RELATIONS BOARD,

*Defendants in Intervention.*

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**BRIEF FOR INTERVENORS.**

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**I. STATEMENT OF JURISDICTION.**

The jurisdiction of this Court is invoked by petitioner, as we understand its position, under Section 10 (c) of the National Labor Relations Act (49 Stat. 449, 29 U.S.C. 160 (c)) hereinafter called the "Act". The Act was

amended by the Labor Management Relations Act of 1947. (Pub. L. No. 101, 80th Cong., 1st Sess., June 23, 1947, 29 U.S.C.A. Sec. 141 et seq. (1947 Sup.).)

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## II. STATEMENT OF THE CASE.

### A. Facts relating to the existence of a closed-shop contract and the dispute as to the interpretation of the contract.

The history of this case begins in June, 1941, when the California Processors & Growers (C. P. & G.), on behalf of its members, and the California State Council of Cannery Unions, a representative body of A. F. L. Cannery Unions, negotiated a collective bargaining agreement, referred to as the "Master Agreement" or the "Green Book Agreement". (R. 196-203; 277-278.)

The Master Agreement so concluded was to become operative in the individual plants of the members of the C. P. & G. upon execution of a certificate of acceptance by the individual plant owner and the Local Union having jurisdiction over the employees of the plant. (Sec. 2 of Master Agreement.)<sup>1</sup>

The Master Agreement so concluded, as will be shown later (*infra* pp. 9-21), was a closed-shop contract within the proviso to Section 8 (3) of the Act.

In July, 1941, the respondent and Local 22382, the Local Union having jurisdiction over the respondent's plant, executed a certificate of acceptance of the terms and conditions of the Master Agreement. (R. 507-509.)

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<sup>1</sup>The pertinent portions of the Master Agreement are set forth on pp. 27-55 of the Board's Brief in the *Scientific Nutrition* case.



Thereafter, and until November, 1945, the Local Union and the respondent administered their agreement as a closed-shop contract. Both old and new employees failing to maintain their membership were precluded from continued employment. The testimony of Assistant Superintendent Gallardo is explicit and uncontradicted on this point:

“Q. Were there occasions during the years from 1940 to 1944, inclusive, when a representative of this Local 22382 would come to you and request that certain employees be discharged?

A. Yes.

Q. Was there just one or two of those occasions, or were there numerous occasions when that occurred?

A. Well, there were numerous occasions.

Q. During that entire period of time, was there any time when you did not comply with that request and go ahead and discharge the employee in question?

A. No. I would inform the employee that they had to clear with the union, or they could not work there, and most of the time they just would not show up any more. I would just tell them they could not work there. I never came right out and definitely told anybody, ‘You are fired’. I would just inform them of the fact that they would have to have a clearance with the union, or they could not work in the cannery, and they usually did not work, or else they got a clearance.

Q. These persons whom you discharged on request of the A. F. L., were these new employees, or were they old employees?

A. Most of them were old employees, but I believe there were a few new ones in there. In fact,

some of them I did not even know their names.'" (R. 472-474.)

During this period, respondent's president, also, interpreted the agreement as requiring closed-shop conditions. (R. 465.)

Prior to the affiliation of Local 22382 with the Teamsters the record fails to indicate the continued employment of any employee failing to maintain good standing in the Union. Indeed, by a supplementary agreement between respondent and Local 22382 on August 21, 1944, an automatic check-off of dues to the union was instituted at the plant. (R. 216-217.)

So far as it relates to the dominant issue in the present proceedings, therefore, the history of the case until mid-1945 contains nothing more than the execution of a traditional closed-shop contract and the subsequent administration of the contract so executed as a closed-shop contract.

Between June-November, 1945, a number of the employees, dissatisfied with the accession of the Teamsters as the governing body of the Local, revoked their authorizations for dues check-off and failed to maintain their status in the union. (R. 229-231.) Indeed, some of them joined a rival union, affiliated with the C. I. O. (R. 245, 259.)

In November, 1945, the A. F. L. demanded that strict enforcement of closed-shop conditions be maintained, and that those not clearing with the union be denied work. (R. 433-434.)

The respondent refused to do so after a conference with the C. P. & G. wherein the C. P. & G. "advised" the respondent that the C. P. & G. interpretation of the contract did not require discharge of employees failing to maintain membership in the union. (R. 464, 465.)

The A. F. L. then, on November 19 and 20, 1945, established a picket line and halted all truck deliveries to respondent's plant, demanding that twenty-eight employees, who had been suspended from the A. F. L. for non-payment of dues, be discharged. (R. 435, 436, 478.) The respondent acquiesced on November 20, 1945, and discharged the named employees (R. 480-482, 247-254, 380-381), and the A. F. L. lifted the picket line. (R. 482-483.) On the following morning a complete check of the union's status of employees was held. Those who failed to exhibit evidence of membership in good standing in the A. F. L. were prevented from entering the plant or were excluded from the plant. (R. 384-386, 391-392.)

Closed-shop conditions then continued in the plant until early February, 1946. In February, 1946, the respondent rehired a number of the employees discharged in November for refusal to maintain good-standing in the union. The A. F. L. immediately called upon the Central Adjustment Board, a body established pursuant to the Master Agreement, composed of an equal number of C. P. & G. and A. F. L. representatives, to adjust this violation of the closed-shop contract. (R. 448-451.)

The Central Adjustment Board, by secret vote, divided evenly on the question whether the contract required discharge of employees failing to maintain their status in

the Union. (R. 448-451.) The matter was then referred to arbitration by an individual to be named by the U. S. Conciliation Service. (R. 445-446, 448-451.) The arbitrator so named, however, refused to serve. (R. 452-454.) Shortly thereafter the hearings in the present proceeding commenced and no further effort was made to arbitrate the question.

**B. Respondent's assistance to the A. F. L. in 1945-1946.**

As previously stated, the crucial question in the present proceedings is whether the agreement between respondent and intervenors constituted a closed-shop contract. On the assumption that it did not, the Board has characterized certain acts of the respondent as "unlawful assistance". These acts included:

(1) Permitting a speech in August, 1945, by a field representative of the C. P. & G. who urged the assembled employees of respondent to "clear through the Teamsters". (R. 233-234, 468-469.) (Petitioner's brief p. 8.)

(2) The refusal of respondent to hire "seasonal" employees on the seniority list who had not cleared with the A.F.L. (R. 326-328, 346-348.) (Petitioner's brief p. 9.)

(3) The discharge in November, 1945, of twenty-eight employees who had failed to maintain their membership in the A. F. L. (R. 380-381, 389-390, 491-492, 500-501.) (Petitioner's brief p. 10-15.)

(4) The discharge of one employee in December, 1945, who had failed to maintain his membership in the union. (R. 371-375.) (Petitioner's brief p. 15.)

It is obvious, of course, that if the A. F. L. Local did have a closed-shop contract, as intervenors contend, the above "acts of assistance", far from being unlawful, were contractual obligations of the respondent.

**C. The clarification of the closed-shop provision during the pendency of representation proceedings.**

In October, 1945, the Board directed an election among the employees of respondent's and other packing concerns. (R. 570.) The election was held in mid-October (R. 243-244), but was set aside in February, 1946, because of procedural irregularities vitiating its accuracy. (R. 595-614.)

In March, 1946, the respondent and the A. F. L. executed a memorandum agreement delineating a closed-shop in respondent's plant in express and unequivocal language (R. 219-220) and thus set to rest any possible doubt as to the closed-shop nature of its obligation. The Board has deemed the execution of this agreement a violation of Section 8 (1) in view of the pendency of representation proceedings at the date of execution. This aspect of the case, as discussed *infra* p. 9, will be governed by the decision of this Honorable Court in *N.L.R.B. v. Flotill Products, Inc.*, No. 11,449. It should be pointed out, however, that if intervenors' basic contention is upheld and the Master Agreement is denominated a closed-shop, the execution of this agreement did not add to or detract from the contractual obligations of the respondent as set forth in the Master Agreement.

### SUMMARY OF ARGUMENT.

In its brief, the Board has confined the issues in the present proceeding to the questions:

1. Whether the discharges were in pursuance of a valid closed-shop contract and thereby protected under the proviso to Section 8 (3) of the Act;

2. Whether the Board properly concluded that the respondent violated Section 8 (1) of the Act:

a. By rendering assistance to the A. F. L.,

b. By entering into a closed-shop contract with the A. F. L. when a representation question affecting its employees was pending before the Board. (Petitioner's brief, page 22.)

So confined, the Board's first contention requires a determination whether the so-called Master Agreement constituted by express or implied terms, a closed-shop contract. This phase of the case largely involves a reiteration of the argument of intervenors set forth in *National Labor Relations Board v. Scientific Nutrition Corporation*, No. 11,694 in the United States Circuit Court of Appeals for the Ninth Circuit.<sup>2</sup>

The second issue raised by the Board is subdivided into two components:

1. Having concluded that the intervenors did not have a closed-shop contract with the respondent, the Board found, in accordance with its usual practice, a violation of Section 8 (1) of the Act. Consequently, the validity of

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<sup>2</sup>The Brief in the *Scientific Nutrition* case is on file with the Clerk of the Court and intervenors have served the parties with copies thereof.

the finding of a violation of Section 8 (1) of the Act rests upon the validity of the Board's contention that the Master Agreement did not constitute a closed-shop contract.

2. The Board has further found a violation of Section 8 (1) in view of the fact that the respondent entered into a closed-shop contract with the A. F. L. when a representation question affecting its employees was pending before the Board. The Board has taken the position: "The legal considerations involved in this phase of the case are, as the Board noted (R. 35), identical with those involved in the matter of Flotill Products, Inc., 70 N.L.R.B. 119." (Petitioner's brief, p. 34.) Intervenors, likewise, agree that the decision in the matter of Flotill Products, Inc., is determinative of this latter aspect of the present proceedings.

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### ARGUMENT.

#### A. THE BOARD'S FINDING THAT RESPONDENT AND THE INTERVENORS DID NOT HAVE A CLOSED-SHOP CONTRACT IS UNTENABLE.

1. The inclusion in the collective bargaining agreement of the provision permitting union members to lay down their tools if non-union members are employed is decisive evidence that the collective bargaining agreement between respondent and intervenors constituted a closed-shop contract.

In the instant case, the parties to the agreement utilized an ancient provision to denominate the existence of a closed-shop and, indicative of the overriding importance attached to this issue of union security, placed the provision as prefatory to all other union security provisions in the contract. Section III of the Agreement provides:

*“It is recognized that the refusal of Union members to work with non-Union employees who are within the jurisdiction of the Local Union shall not constitute a violation of this agreement. \* \* \*”* (Appendix B, Petitioner’s Brief, p. 31.)<sup>3</sup>

The inclusion of this provision is, we submit, decisive of the question whether the parties to the agreement executed a closed-shop agreement: *This provision is the strongest concession that an employer can grant to assure the Union of maintenance of closed-shop conditions.*

The provision authorizes work stoppages for the enforcement of a closed-shop provision, and has been so recognized by commentators.<sup>4</sup> Indeed, it permits enforcement of the clause by the method of work stoppage which is even more drastic than a strike.<sup>5</sup>

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<sup>3</sup>All italics in this brief are our own.

<sup>4</sup>“In a few industries where bargaining is generally conducted with employers’ associations, the strike has been accepted as a means of enforcing the agreement against recalcitrant members of the association. In such cases *strikes against individual employers are permitted for enforcement purposes* and do not constitute a violation of the association agreement.” (Italics supplied.) “Union Agreement Provisions”, *Bulletin No. 686*, U. S. Department of Labor, Bureau of Labor Statistics, U. S. Government Printing Office (1942), p. 162. By permitting a refusal to work if non-Union employees are employed, the Association was obviously assenting to the enforcement of the agreement as a closed shop.

<sup>5</sup>The distinction between a refusal to work and a strike is demonstrated by the following language from *New York Labor Relations Board v. Union Club of City of New York*, 268 App. Div. 516, 52 N. Y. Supp. (2d) 74 (1944).

“What occurred here did not amount to a strike in the ordinary sense of the term. The employees did not leave the premises of the employer, but remained thereon. They did not choose to abandon their work until their demands were met.”

This case was reversed on other grounds in *New York State Labor Relations Board v. Union Club of City of New York*, 295 N. Y. 917, 68 N. E. (2d) 29 (1946).



It is undenied that Intervenors consistently maintained the position that work stoppages were sanctioned by the Agreement. Quoting from the testimony of R. M. Tomson, Secretary-Treasurer and Business Manager of Local 22382 from July 1942 to June 1945, President of the California State Council of Cannery Unions from February 1944 to June 1945, and member of the Adjustment Board provided for in the Master Agreement:

“Q. In connection with employees newly hired, is it not a fact, Mr. Tomson, that you on occasions visited the plant of members of the C. P. & G. and told the employers to discharge workers who have failed to complete their affiliation with the Union?

A. Well, we might have asked them to. *We might have even threatened them with causing a work stoppage if they did not.*

Q. And you felt that that was a matter of your right under the union contract, did you not?

A. It was a matter of right under the contract for the Union members to refuse to work with non-Union members.” (R. 320.)

Embodied only in the contracts of Unions having a long history of the strictest closed-shop conditions, the refusal proviso affords a *modus operandi* which would place an employer in the disastrous position of subjection to economic ruin if non-Union members are employed or retained. Clearly in the absence of such a closed-shop enforcement provision, the employees would not have this right to lay down their tools.<sup>6</sup> Nor can it be successfully

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<sup>6</sup>Thus, in arbitration proceedings involving the United Automobile Workers and the Allis Chalmers Manufacturing Company arising out of the refusal of an employee to work alongside a prompter of a rival union and deserter from the CIO, arbitrator Lloyd

maintained that an employer would *authorize* this cessation of operations during working hours and consequent increase in operating costs if he contemplated hiring or retaining a non-Union employee. Substantively, the Board is arguing that the employer, in effect contemplated the retention or hiring of non-Union employees and concurrently authorized the Union employees—his entire working force—to lay down their tools if he did. The absurdity of ascribing such a schizophrenic intention to the bargaining parties is manifest.

Yet this absurdity is compounded and rendered more grotesque when the bargaining agreement is construed in conjunction with the provisions of the National Labor Relations Act and decisions thereunder.<sup>7</sup> Having authorized the employees to lay down their tools if non-Union employees are employed, the employer would be powerless to terminate the stoppage by discharging the non-Union employee since such a discharge, according to the Board, would constitute an unfair labor practice under the doctrine of the *Star Publishing Company* case.<sup>8</sup> Nor, could the employer discharge the idle employees and terminate the employer-employee relationship: The employees laid

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Garrison after finding the bargaining agreement did not provide for a closed-shop, established the principle:

“A member of a labor organization (*in absence of closed-shop*) has no right to refuse to work with another man because the other man is a member of another labor organization.”

*Awards by Special Arbitrators, Rules on Union-Company Relations*, 9 Labor Relations Reference Manual 833 (1941).

<sup>7</sup>It goes without saying that “the contracting parties are presumed to have had in view the statute upon the subject, and it must be held to enter into and become a part of their contract upon that subject, if the contract can be so construed”. *Brown v. Kling*, 101 Cal. 295, 35 Pac. 995 (1894).

<sup>8</sup>*N.L.R.B. v. Star Publishing Co.*, 97 F. (2d) 465 (CCA 9), enforcing 4 N.L.R.B. 498.

down their tools at his express and written authorization! Yet, according to the Board, the parties intended nothing less than this absurdity.

It is hornbook law that a contract is not to be construed to yield an unusual and extraordinary result. It is equally axiomatic that a contract will be presumed to have been drawn for the attainment of lawful objectives. The Board, by cavalierly dismissing this vital provision, has ascribed to the bargaining parties the desire to subject the respondent's plant to the hazard of economic destruction eventuating upon the whim of a single employee who fails to retain his union membership, for the Board denies the employer contemplated any lawful means of terminating the consequent work stoppage.

That the provision in question is a more stringent union security clause than the usual closed-shop provision can be demonstrated by a moment's analysis of its operative effect. In the event of a breach by the employer of a standard, explicit, yet bare, promise to maintain a closed-shop, the employees could:

- (a) Waive the breach.
- (b) Take legal action to enforce the agreement or obtain compensation for the breach.
- (c) Strike to compel enforcement.

Under the present provision, the employees have the above alternatives and also the privilege of conducting a work stoppage until the non-Union employee is dismissed. Insofar as a body of judicial decision exists to the effect that a work stoppage, as distinguished from a strike, to compel performance of a collective bargaining

agreement is unlawful,<sup>9</sup> the inclusion in a collective bargaining agreement of employer authorization for such action is, indeed, far more advantageous to the Union than a less enforceable albeit more explicit promise that no non-Union employee will be retained.

2. **The mechanics set forth in the agreement to implement the provision enabling the union members to lay down their tools if non-union members are employed are consonant only with the existence of a closed-shop agreement.**

That the parties contemplated that this provision should operate as a closed-shop provision is clearly indicated by the mechanics set forth in the agreement by which the provision was to be enforced. Quoting further from Section III (a):

“(a) It is recognized that the refusal of union members to work with non-union employees who are within the jurisdiction of the local union shall not constitute a violation of this agreement, *provided*, however, that *before any strike action, job action, or other direct action* is taken on this account, the local union will submit the matter for adjustment as provided in Section 8 hereof. *In order to aid in the prompt adjustment of such matters, the union shall furnish its members with a clearance card, dues book or other evidence of paid-up membership, and when employees who are on the seniority lists, as defined in Section 9 hereof, are called to work, the employer will request that such evidence be presented by those who have it, and will keep a record, which will be available to the Union, of all employees who do not*

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<sup>9</sup>See: *New York Labor Relations Board v. Union Club of City of New York*, 268 App. Div. 516, 52 N. Y. Supp. (2d) 74 (1944); *C. G. Conn, Ltd. v. National Labor Relations Board*, 108 Fed. (2d) 390 (CCA 7) (1939).

*present such evidence. Similarly, the union will from time to time, when such information is available, notify the employer of the names of delinquent or suspended members, or other non-union employees, according to union records."* (Italics supplied.)

Paraphrasing the Board's essential contention that the above provision is consistent with the creation of an open shop, we find the employer not only *authorizing* economic action against his plant but also actively *assisting* in discovering grounds for commencing it! The employer must "keep a record" of employees who fail to join the union, and he must make that record "available to the union". When the record shows non-membership of a single employee, all employees are entitled to stop working. Can it be seriously contended that an employer would not only *authorize* a work stoppage but bind himself to the duty of scurrying about to give the union grounds for its commencement if his contract with the union were intended to prevent the discharge of the offending employee, the source of the difficulty?

These provisions for checking and cross-checking for "evidence of paid-up membership", implementing the right to lay down tools if non-union employees are retained, comprise nothing less than an implicit recognition of the requirement that such union card be obtained and maintained by the employee. Obviously, unless the parties to the agreement contemplated the discharge of any non-union employee, the mere determination of non-union status would not "aid in the prompt adjustment" of a threatened exercise of the contractual privilege to cease work. The only possible method of "adjustment" and

avoidance of strife is the discharge of the non-union employee.

3. **The inclusion of a preferential hiring clause and the institution of a voluntary check-off are additional strong indicia that the parties executed a closed-shop agreement.**

Paragraph two of Section 3 (a) of the Agreement between the respondent and the intervenors provides:

“The Employer shall be the sole judge of the qualifications of all of its employees, subject to appeal as provided in Section 8 hereof, but in the selection of new employees the Employer will give preference of employment to unemployed members of the local union, provided they have the necessary qualifications and are available when new employees are to be hired. ‘New Employees’, for the purpose of this agreement, are defined to be persons who are not on the seniority list of the hiring plant, as defined in Section 9 hereof, even though they may have been employed previously by said plant. As a basis for preferential consideration as new employees as aforesaid, unemployed members of the local union shall be required to present a clearance card from the local union evidencing the fact of their paid-up membership. (If such union members are not available for such employment, the Employer may hire any person not a member of the Union provided that such person will be required to file an application for membership in the local union before being put to work. Upon filing such application he shall receive from the Union a written statement that he has made such application, which statement shall be taken up by the Employer and returned to the Union when the applicant is put to work. It is further understood that such person must become a member of the local union

within ten (10) days after his employment, and that the local union will not unreasonably refuse to accept such person as a member.)”

These provisions requiring union membership of all new employees and also providing for preferential hiring through the Union are the usual ancillary provisions of closed-shop agreements. As stated by the Department of Labor:

“Provisions establishing some form of closed or preferential union shop are frequently accompanied by provisions outlining the procedure to be followed in hiring new employees \* \* \*

“A time limit may be applied to the provision for hiring through the union office. Thus, if sufficient persons cannot be furnished by the union within a specified number of hours, the employer is allowed to secure workers from other sources. \* \* \* *If a closed shop exists, workers hired in the open market must specify their willingness to join the union, and are usually given a few days after employment within which to apply for membership.*”<sup>10</sup>

Similarly, although provision for a check-off was not incorporated in the agreement, the voluntary institution and maintenance of a check-off system for a considerable period of time is additional persuasive evidence that the parties believed they were administering a closed-shop agreement. As stated by the Department of Labor:

“The check-off provision has no inherent connection with the type of recognition in existence. *As a rule, however, unions which are well enough estab-*

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<sup>10</sup>“Union Security Provisions”, supra, footnote 4, p. 27.

*lished to obtain a check-off system are likely also to have a closed or union shop.’’<sup>11</sup>*

The inclusion of provisions that are common ancillaries to closed-shop agreements and the institution of a voluntary check-off are, counsel submit, strong and persuasive evidence that the parties contemplated, executed and administered an agreement providing for a closed-shop and rendered membership in the union a condition of continued employment.

**4. The Board has not followed its doctrine of strict construction in previous proceedings.**

Woven into the fabric of the Board’s argument is a thread of innuendo to the effect that the closed-shop provision in a collective bargaining agreement must be written in express, unequivocal and standard language. It must be initially recognized, however, that in the instant agreement the phrase in question permitting union members to lay down their tools was incorporated in the agreement at a time when the language of collective bargaining agreements was still in a formative stage.<sup>12</sup> Furthermore,

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<sup>11</sup>Ibid., p. 29.

<sup>12</sup>“Union Agreement Provisions”, supra, footnote 4, the first sizeable collection of union security clauses, was issued in 1942. The Bureau of National Affairs did not commence its “Collective Bargaining and Negotiations” service until 1945. Early cases before the Board indicate that parties frequently believed they were writing a closed-shop agreement although the language they employed only provided for preferential shop. See: *Matter of Ansley Radio Corporation and Local 1221, Electrical and Radio Workers of America*, 18 N.L.R. B. 1028 (1939); *Matter of General Furniture Manufacturing Co. and Furniture Workers’ Union Local 1007*, 26 N.L.R.B. 74 (1940), discussed infra pp. 19-21. The instant union security provisions were first incorporated in the agreement in 1941.



the Supreme Court has tacitly recognized the validity of *oral* agreements for a closed shop<sup>13</sup> and, indeed, the Board has construed as “closed-shop agreements” written collective bargaining contracts *providing only for preferential hiring* when the parties, in good faith, regarded the agreement as containing a closed-shop provision.

Thus in *Ansley Radio Corporation and Local 1221 United Electrical and Radio Workers of America*, 18 N.L.R.B. 1028 (1939), the Board, refusing to declare a preferential hiring agreement as insufficient to constitute a closed-shop agreement in view of the parties’ declared construction of their contract, stated:

“Effectuation of the purposes and policy of the Act requires that in such instances the determination of whether the respondent has engaged in an unfair labor practice should not depend upon a fact which is contrary to the understanding of the employer and all persons concerned \* \* \*” (18 N.L.R.B. at 1031.)

Again, in *Matter of General Furniture Manufacturing Company and Furniture Workers’ Union Local 1007*, 26 N.L.R.B. 74 (1940), the written agreement provided:

“In filling vacancies or hiring new help, the Company agrees to give preference to members of the Union. If Union men who are satisfactory to the Company are not available, the Company may then hire whom they desire providing such employees join

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<sup>13</sup>See: *National Labor Relations Board v. Electric Vacuum Cleaner Co.*, 315 U.S. 685, 62 S.Ct. 846 (1942), wherein the Court discussed at length whether the parties had “abandoned” an oral closed shop contract. The Board has explicitly held that an oral agreement is sufficient to satisfy the proviso to 8 (3) of the Act. *United Fruit Co. and International Longshoremen and Warehousemen’s Union*, 12 N. L. R. B. 404 (1939); *Taylor Milling Co. and Avery Smith and James L. Wykes*, 26 N.L.R.B. 424 (1940).

the Union within thirty (30) days of being given employment.” (26 N.L.R.B. at p. 79.)

Quoting from the findings of the Board in the mentioned case:

“The respondent and Local 2097 contend that by Article V of the contract the respondent was obligated to require union membership of all its employees, those in its employ at the time the contract was entered into as well as those hired thereafter. *The provision, on its face, however, appears to refer to only preferential hiring of new or additional employees through the Union and does not appear to establish a closed shop as the respondent and Local 2097 contend.* However, clear and convincing proof was adduced at the second hearing that the parties *mutually intended and agreed* in the agreement reached by them \* \* \* and which they supposed was expressed in the instrument when executed that the respondent require of all production workers then in its employ and thereafter union membership as a condition of employment \* \* \*” (26 N.L.R.B. at p. 79.)

The Board concluded, on page 80:

“Under these circumstances the contract will be considered for the purposes of this proceeding as a closed-shop contract, as if it expressly set forth the respondent’s undertaking.”

If the Board is willing to regard an unequivocal written preferential hiring agreement as constituting a closed shop, intervenors are at a loss to understand the Board’s sudden position that an agreement providing for preferential hiring, supplemented by provisions for inquiring

into and determining the union status of all employees *and* containing the traditional closed-shop provision permitting union employees to refuse to work if non-union employees are employed—an agreement regarded by the parties as a closed shop agreement—is insufficient to satisfy the proviso to Section 8(3) of the Act.

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#### B. THE OTHER CONTENTIONS OF THE BOARD ARE WITHOUT MERIT.

The Board has relied upon a series of cases commencing with *N.L.R.B. v. Cheney California Lumber Co.*, 327 U. S. 385 (1945) as precluding this Honorable Court from inquiry into the validity of the order of reinstatement of the Board and the propriety of all portions of its order to which the respondents and the Teamsters failed to make specific exception.

The fallacy in the argument is manifest. Section 10 (e) of the Act provides, *inter alia*:

“No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to *questions of fact* if supported by substantial evidence on the record considered as a whole shall be conclusive.” (Italics added.)

The finality of the Board’s rulings and order must be bottomed on *findings of fact*. The issue in the present case is not an issue of fact but an issue of law—the construction of a contract. As stated in *Aluminum Co. of America*

*v. N.L.R.B.* (CCA-7) 159 Fed. (2d) 523 (1946), wherein the Board had construed a closed-shop contract as inoperative and then sought enforcement of a reinstatement order:

“It is an elementary rule not requiring citation of authorities that the construction and meaning of a written contract is a question of law. \* \* \* The problem in the instant case does not center about the drawing of inferences from surrounding circumstances, but instead it requires an interpretation of the language of the addendum itself \* \* \*”

After examining the addendum and holding the closed-shop contract to be in effect, the Court rejected the Board's contention that the issues involved findings of fact, deemed inapplicable cases now advanced by the Board<sup>14</sup> and refused enforcement, stating:

“It is apropos at this point to note that the Board's order appears to be founded upon a misinterpretation of the Act and thereby fails to effectuate its policies. Among other things the Act was designed to strengthen the Unions in their dealings with the employers. The closed-shop proviso is an example. But while the Act protects individual Union members from discriminatory discharge *it strains the imagination to see where in the Act Congress has intended that discharges made pursuant to a valid Union security contract should in themselves constitute an unfair labor practice.* It would appear that the effect

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<sup>14</sup>“The cases cited by the Board, National Labor Relations Board v. Electric Vacuum Cleaner Co., *supra*; Wallace Corp. v. National Labor Relations Board, 323 U.S. 248; National Labor Relations Board v. Link-Belt Co., *supra*, admittedly are inapplicable if the discharge is pursuant to an existent closed-shop agreement untainted by any unfair labor practice.” *Aluminum Co. of America v. National Labor Relations Board*, *supra*, at p. 526.

of this order is that the Board is seeking to protect a recalcitrant member from his Union's discipline. The Supreme Court, we believe, anticipated this situation in *Virginia Electric & Power Co. v. National Labor Relations Board*, 319 U. S. 533, when it said:

'It (Board's judgment) should stand unless it can be shown that the order is a patent attempt to achieve ends other than those which can fairly be said to effectuate the policies of the Act.' "

That an order of the Board must be denied enforcement if bottomed on an erroneous conclusion of law is likewise implicit in the decision in *N.L.R.B. v. Cheney Lumber Co.*, supra, wherein Justice Frankfurter, speaking for the Court, deemed the decision in the case inapplicable "if the Board has patently travelled outside the orbit of its authority so that there is, legally speaking, no order to enforce." (p. 388.)

Nor may the Board obtain any satisfaction from the cases establishing the principle that even if the parties had a closed-shop contract, employer discrimination is not permissible where it would result in a denial to employees of the fundamental freedom to select representatives and the protection against discrimination, which the Act as a whole was designed to afford. (See Petitioner's Brief, p. 32.) The case of *Wallace Corporation v. N.L.R.B.*, 323 U. S. 248 (1944), cited by the Board (p. 32), involved a discharge of an employee at the request of the Union although the employer knew that the employee was denied membership in the Union because of his activities on behalf of a rival Union. In the instant case, there is nothing other than the standard enforcement of a closed-shop

agreement. The employee had failed to retain his membership in the Union although membership in the Union was a condition of employment.

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### CONCLUSION.

The Board's petition in this case rests upon an erroneous construction of the written agreement between respondent and intervenors. The agreement, on its face, constitutes a closed-shop agreement, but, even if it carries any latent ambiguity, the ambiguity should be resolved in accordance with the interpretation and conduct of the parties. The Board's attempt to deny vitality to the agreement and to dismiss the parties' conduct under it in proving the proper interpretation of the agreement is, counsel believes, an unsupportable doctrine.

We submit that the logical construction of the agreement, as well as the underlying postulates for industrial peace, require the dismissal of the petition.

Dated, San Francisco, California,  
November 10, 1948.

Respectfully submitted,  
TOBRINER & LAZARUS,  
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*Attorneys for Intervenors.*

No. 11693

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**In the United States Circuit Court of Appeals  
for the Ninth Circuit**

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**NATIONAL LABOR RELATIONS BOARD, PETITIONER**

*v.*

**G. W. HUME COMPANY, RESPONDENT, AND INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, A. F. L., AND CALIFORNIA STATE COUNCIL OF CANNERY UNIONS, A. F. L., INTERVENORS**

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**ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD**

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**BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD**

---

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FILED

DEC 8 1947

PAUL P. O'BRIEN.





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# **In the United States Circuit Court of Appeals for the Ninth Circuit**

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No. 11693

NATIONAL LABOR RELATIONS BOARD, PETITIONER

*v.*

G. W. HUME COMPANY, RESPONDENT, AND INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, A. F. L., AND CALIFORNIA STATE COUNCIL OF CANNERY UNIONS, A. F. L., INTERVENORS

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ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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## **JURISDICTION**

This case is before the Court upon petition of the National Labor Relations Board for enforcement of its order issued against respondent G. W. Hume Company on October 31, 1946 (71 N. L. R. B. 533; R. 33-139), pursuant to Section 10 (c) of the National Labor Relations Act (49 Stat. 449, 29 U. S. C., Sec. 151, *et seq.*)<sup>1</sup> Jurisdiction of this Court is based upon

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<sup>1</sup> Relevant portions of the Act appear in the Appendix, *infra*, pp. 47-51. The Board's decision and order were issued prior to, and present no question affected by, the amendments to the National

Section 10 (e) of the Act. The unfair labor practices occurred at respondent's plant in Turlock, California, within this judicial circuit.<sup>2</sup>

## STATEMENT OF THE CASE

### A. The facts

The question presented by this case is whether the Board properly found that respondent (a) violated Section 8 (3) of the Act by discriminatorily discharging 29 of its employees for failure to maintain membership in the A. F. L.<sup>3</sup> at a time when respondent had a preferential hiring agreement with the A. F. L., but not a closed-shop contract, and (b) violated Section 8 (1) of the Act by thereafter, and while a representation question affecting its employees was pending before the Board, entering into a closed-shop contract<sup>4</sup> with the A. F. L., and by engag-

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Labor Relations Act by Section 101 of Title I of the Labor Management Relations Act, 1947, effective August 22, 1947 (Pub. L. No. 101, 80th Cong., 1st Sess., June 23, 1947).

<sup>2</sup> Respondent, a California corporation, is engaged at its plant at Turlock, California, in the canning and processing of fruits and vegetables (R. 7-8, 19). In the course of its business respondent causes more than 62 percent of its products, valued in excess of \$1,900,000 annually, to be sold and shipped in interstate and foreign commerce (*ibid.*). The Board's jurisdiction is not contested (R. 192-193).

<sup>3</sup> The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. L., and the California State Council of Cannery Unions, A. F. L., and its constituent unions, one of which is Local 22382, are all hereinafter called A. F. L., except when distinction among them may be required by the matter under discussion (R. 194, 431, 472-473).

<sup>4</sup> While there is a distinction between the terms "closed-shop" and "union-shop," in the proceedings before the Board, the parties used the terms more or less interchangeably. The term "closed-shop" will be applied herein to either or both types of collective

ing in other acts of interference, restraint, and coercion. The relevant facts, as found by the Board, are not disputed.<sup>5</sup> Briefly, they are as follows:<sup>6</sup>

1. Respondent's relations with the A. F. L. from 1941 to 1946

Respondent is a member of an association of west coast packing concerns known as the California Processors & Growers, Inc., herein called the C. P. & G. (R. 51; 8-9). In the fall of 1940, Cannery Work-

bargaining agreements, unless a distinction is required by the subject under discussion. For a comparison of the various types of union security provisions in collective bargaining agreements, see, *Union Agreement Provisions*, United States Dept. of Labor, Bureau of Labor Statistics (U. S. Gov't Printing Office, 1942), Bulletin No. 686, pp. 19-27 and 1946 Supplement; Smith, *Collective Bargaining* (Prentice-Hall, 1946), pp. 60-68; Welty, *Labor Contract Clauses in the Automotive and Aviation Parts Manufacturing Industry* (Automotive and Aviation Mfg. Industry, Inc., 1945), Chap. IV; Prentice-Hall, *Union Contracts and Collective Bargaining Practices*, pars. 53, 129 ff; Bureau of National Affairs, *Collective Bargaining Negotiations and Contracts*, Secs. 87; 1 ff.

<sup>5</sup> Neither respondent nor the intervenors raised objections before the Board to the Trial Examiner's findings of fact. Respondent filed no exceptions at all to the Intermediate Report (R. 34). The intervenors filed exceptions but, in doing so, excepted only to the Trial Examiner's legal conclusions (R. 30-32). In oral argument before the Board both respondent and the intervenors took exception to the Trial Examiner's legal conclusions, but not to his findings of fact. Upon this state of the record the Trial Examiner's findings of fact, as adopted by the Board (R. 34-38, 50-111), are not open to question before the Court. *N. L. R. B. v. Cheney California Lumber Co.*, 327 U. S. 385, 388-389; *Marshall Field & Co. v. N. L. R. B.*, 318 U. S. 253, 255; *N. L. R. B. v. Kinner Motors, Inc.*, 154 F. 2d 1007 (C. C. A. 9); *N. L. R. B. v. Cutler*, 158 F. 2d 677 (C. C. A. 1).

<sup>6</sup> The Board adopted, with minor modifications (R. 34-35), the findings, conclusions and recommendations of the Trial Examiner (R. 49-126). In the following résumé of the facts, references to the Board's findings precede the semicolon, and references to the supporting evidence follow the semicolon.

ers Union Local 22382, began to organize the plants of respondent and other C. P. & G. members (R. 50-51; 431, 471-472). And since 1940 respondent has recognized Local 22382 as the exclusive bargaining representative of its employees (R. 51-52; 197, 428, 615).

On or about June 10, 1941, a collective bargaining agreement, herein referred to as the Master Agreement,<sup>7</sup> was executed between the C. P. & G., on behalf of its members, and the California State Council of Cannery Unions, as the representative of the various A. F. L. cannery workers' unions in the state (R. 51; 196-203, 277-278). On or about July 3, 1941, pursuant to a provision of this contract, respondent executed an agreement with Local 22382, adopting the Master Agreement as applied to its operations (R. 51; 506-509). The Master Agreement was subsequently amended in minor respects in January 1942 (R. 51; 509-512), and again in July 1943 (R. 51; 512-514, 615). As last amended, it was to run until March 1, 1945, and thereafter from year to year, subject to modification or termination upon specified notice by any party thereto (R. 51-52; 637-638). Pursuant to this provision it was automatically renewed in 1945, to run until March 1, 1946 (R. 52; 197). This agreement, as will be shown later (*infra*, pp. 23-44), was not a closed-shop contract but was merely a preferential hiring contract.<sup>8</sup>

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<sup>7</sup> Also referred to in the record as the "Green Book Agreement" (R. 198, 277).

<sup>8</sup> Unlike a closed-shop contract, a preferential hiring agreement does not fix union membership as a condition of either initial or continued employment. A preferential hiring agreement provides



Until early in 1945, Local 22382 was not affiliated with any of the various A. F. L. international unions which are composed of numerous affiliated local unions, but was what is known as a Federal Local Union, affiliated directly with the A. F. L. itself (R. 50-51, 60-61; 222, 287). Sometime in June 1945, however, while the plant was not in production, A. F. L. representatives discussed with respondent's "regular" employees,<sup>9</sup> all of whom apparently were members of Local 22382, a proposed transfer of jurisdiction over Local 22382 from the A. F. L. itself to the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (R. 59-60; 228-230, 272-274, 284-285). Although the proposed change was vigorously opposed by respondent's employees (R. 60; 229-230, 240-242, 272-274, 287), it apparently was effectuated soon thereafter (R. 61; 284, 524-527).<sup>10</sup> Shortly after the proposed transfer of jurisdiction over Local 22382 to the Teamsters was

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merely that the employer, in the *hiring* of new employees, will give *preference* to available and qualified members of the union (*supra*, pp. 2-3, n. 4). The Master Agreement was strictly a preferential hiring agreement (*infra*, pp. 23-44).

<sup>9</sup> Respondent's operations fluctuate widely with the packing seasons. Between seasons when the plant is not in production respondent retains only 20 or 30 workers. These are known as permanent or "regular" employees. During the packing seasons a large number of "seasonal" workers are hired to augment the small staff of "regular" employees (R. 59, 63, 107-108; 229, 231-232, 432-433).

<sup>10</sup> As the Board observed (R. 61, n. 12), the record does not clearly reveal the exact time and manner in which the Teamsters "became injected into the picture" as the affiliate of Local 22382. It is clear, however, as the Board found (*ibid.*), that "In August, 1945, \* \* \* [the] Teamsters appear to have taken control

announced, all of respondent's "regular" employees revoked their voluntary authorizations to the Company to deduct union dues and assessments from their pay (R. 60; 229-231). Such deductions had been made up to that time in accordance with a check-off agreement between respondent and Local 22382 (R. 55-57; 216-218, 222-224, 279).<sup>11</sup> After receipt of the revocations, respondent no longer deducted dues for Local 22382 from the pay of its "regular" employees, nor did these employees pay dues to any other affiliate of the A. F. L. in 1945 (R. 60; 231, 276, 279-281, 355, 364, 366, 393-395, 403-404).

**2. The C. I. O. organizational campaign; subsequent A. F. L. demands that respondent give the Master Agreement the force and effect of a closed-shop contract**

During the summer of 1945 the C. I. O.<sup>12</sup> began an organizing campaign among the employees of respondent and of numerous other California packing concerns both members and non-members of the C. P. & G. (R. 63; 327-328, 348-349, 384, 392, 403-404, 428-  

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for all practical purposes and to be the group with whom Hume was dealing" (R. 232-236).

<sup>11</sup> The original check-off agreement between respondent and Local 22382, which was executed in August 1944 and was not part of the Master Agreement, provided for compulsory check off of union dues and assessments from the wages of "each employee \* \* \* covered by this agreement" (R. 55-57; 216-218). In June 1945, however, this check off agreement was superseded by an amendment to the Master Agreement which provided that union charges be checked-off against the wages of union members only upon the voluntary written authorization of the individual employee, and that such authorization was revocable at the will of the employee (R. 58-59; 408, 410).

<sup>12</sup> Food, Tobacco, Agricultural and Allied Workers Union of America, affiliated with the C. I. O., herein called C. I. O.

429, 431-432, 477). After its drive had been under way for several weeks, the C. I. O. filed with the Board petitions seeking certification as bargaining representative of the employees in many of these plants, including respondent's (R. 63-64; 431-432, 569-570). After hearings were held on these petitions, the Board, in October 1945, directed employee elections at the plants involved (R. 64; 568-594, *infra*, pp. 17-18). The results were inconclusive and all of the elections were subsequently vacated by order of the Board (R. 64-65; 595-610). This aspect of the case is discussed hereinafter (*infra*, pp. 18-21, 45-46).

*(a) Attempts by respondent and the A. F. L. to induce employees to join the A. F. L.*

As we have noted, and shall discuss more fully below (*infra*, pp. 23-44), the Master Agreement which had been in effect between respondent and the A. F. L. since 1941 was nothing more than a preferential hiring contract. Concurrently with the initiation of the C. I. O. campaign, however, the A. F. L. began a determined drive to compel respondent to give the agreement the force and effect of a closed-shop contract, and thereby to compel all of respondent's employees to maintain membership in the A. F. L. Respondent's response to this pressure from the A. F. L. varied from time to time and alternated between acquiescence and adamant refusal.

Thus, early in August 1945, as its plant was about to open for the peach canning season, respondent joined the A. F. L. in a move designed to induce all the "regular" employees who had dropped out of the union the preceding June to renew their memberships.

At this time respondent's plant foreman ordered the "regular" employees to assemble for a meeting which was attended by Plant Superintendent Fordham (R. 60-61; 538-539), Assistant Superintendent Gallardo (R. 61; 471), F. S. Clough, a field representative of the C. P. & G. (R. 61; 233, 468-469), and several representatives of the Teamsters (R. 60-61; 232). In a speech to the employees, Clough urged that they "clear through the Teamsters \* \* \* to keep the plant operating in a peaceful manner" (R. 61; 234).<sup>13</sup> His suggestion met with considerable opposition, however, by those "regular" employees whose employment had started after the original execution of the Master Agreement. These employees had cleared with Local 22382 when first hired as "new employees" (R. 62; 234-235), and since then, together with "seasonal" employees on the seniority list, had not been required to make further clearance for succeeding seasons either under the Master Agreement (R. 62; 615-648) or by custom (R. 62; 234-235).<sup>14</sup> Many of them felt that clearing through the Teamsters again would necessitate executing dues check-off authorizations for that organization (R. 61; 235-236). When Clough assured them that this would not be the case, the "regular" employees at the meeting signed cards requesting clearance from the Teamsters (*ibid.*).

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<sup>13</sup> To "clear through the Teamsters" was a phrase used to describe the practice of requiring a job applicant to get a "clearance" card from that union certifying that he was a member in good standing and eligible to be hired (R. 224-225, 234).

<sup>14</sup> The Master Agreement provided for the maintenance of a seniority list at each plant (R. 626-632), to be composed (a) of "regular" employees, i. e., "Those who have worked in a given

And, subsequently, the "seasonal" employees followed suit (R. 62-63; 326-328, 346-348, 403-404).

In spite of Clough's contrary representation, however, "seasonal" employees reporting to the A. F. L. for clearance slips, as the August 1945 canning season commenced, were required to execute dues check-off authorizations before the union would give them clearance (R. 62-63; 236-237, 326-328, 346-348, 403-404). Since many of these "seasonal" employees had worked for respondent for several years and were, as the Board found (R. 34, 87), on the seniority list, this requirement brought forth an immediate protest to Superintendent Fordham that they were being "double-crossed" (R. 237). Their complaint, however, went unheeded (R. 62; 237-238, 431-433). And despite the fact that the Master Agreement gave the A. F. L. no warrant to insist upon check-off authorizations from any employee and, indeed, afforded respondent no grounds for requiring union clearance by any except "new" employees (*infra*, pp. 26-28), respondent refused work to any employee, including "seasonal" employees on the seniority list, who had not cleared with the union (R. 62; 326-328, 346-348).

Notwithstanding the coercive tactics of the A. F. L., to which respondent gave its support, some 150 of the plant at least forty (40) weeks out of the fifty-two (52) weeks during the preceding calendar year" (R. 628), and (b) of "seasonal" employees, i. e., "those other than regular employees, who worked in a given plant at least sixty percent (60%) of the total number of operating days of said plant during the previous season" (*ibid.*). "New" employees were defined as those who were not on the seniority list (R. 618).

400 "seasonal" employees taken on for the peach canning season revoked their check-off authorizations immediately after being hired (R. 63; 238-239, 327, 346, 388-389, 393-394, 403-404, 432-433). By various means the A. F. L. sought to persuade these employees to cancel their revocations, but its efforts were unsuccessful (R. 65; 433-434). Although respondent had given tacit encouragement to the A. F. L. practice of extracting check-off authorizations from job applicants, respondent honored the revocations of the authorizations after their receipt and deducted no dues from the pay of the employees who signed them (*ibid.*).

*(b) The discriminatory discharges*

(1) *The discharges of November 20-21, 1945.*—In the fall of 1945, the A. F. L. renewed its efforts to induce respondent to give the preferential hiring section of the Master Agreement the force and effect of a closed-shop provision. Thus, early in November, at the start of the fall spinach canning season, it demanded that respondent "lay off or fail to employ all [employees] who would not clear" through the A. F. L. (R. 65; 433-434). This construction of the agreement by the A. F. L., however, was promptly rejected by respondent after President Hume had conferred with the C. P. & G. and had been advised that the Master Agreement would not permit the discharge of any employees for their refusal to join the A. F. L. (R. 65-66; 433-434, 464-465).

Shortly after respondent rejected this demand the A. F. L. adopted another tactic. On November 19,

it cut off all spinach deliveries to the cannery and informed respondent that no further deliveries would be made “until certain employees were discharged” (R. 66; 435). The following morning it placed a picket line around the plant and refused to allow any trucks to enter (R. 66; 436, 478). On that same day the A. F. L. gave to President Hume a list of 28 employees whose discharge it demanded on the ground that they had been suspended from the A. F. L. for non-payment of dues (R. 66; 251–252, 479–481). Upon receipt of this ultimatum, respondent receded from its previous interpretation of the Master Agreement and acquiesced in the A. F. L. demand (R. 66–67; 480–482). President Hume immediately assembled the “regular” employees, explained the A. F. L. demand to them, had the list read aloud, and told them that those whose names had been read were being laid off until further notice (R. 66–67; 247–254, 348, 380–381, 389–390, 400–401, 403–404, 491–492, 500–501).<sup>15</sup> Following this action the A. F. L. lifted the picket line and allowed spinach to be delivered to the cannery (R. 66–67; 456, 482–483).

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<sup>15</sup> The “regulars” who were thus laid off included, as the Board found (R. 34, 66, 69, 73, 117–118), the following 18 employees: A. E. Berry, Ernest G. Bishop, Vidor Bjorkund, Jasper J. Bobb, Harold Dillard, William J. Ely, Clyde Faddis, H. F. Frazier, Harlie Frischknecht, (erroneously listed as “Harlie Cruikshank,” see, *infra*, pp 13–15). Irwin C. Heagle, Oscar Johnson, T. Boyd McKamey, Archie Miller, A. E. Moore, Harry E. Pierson, Abe Thiessen, Neal Watts, and R. B. White (R. 403–404, 500–501). While Moore’s name was not on the written list given Hume by the A. F. L., it had been mentioned to Hume orally by the A. F. L. as one of the employees whose discharge was demanded (R. 67, n. 17; 492). Aside from Clifford Luther, who was discharged

On the morning of November 21, however, the A. F. L. blocked the entrances to the cannery and, with the exception of ex-servicemen, permitted the entrance of no male employee who was unable to exhibit a current clearance card from the A. F. L. (R. 69; 255-256, 384-386, 391-392). Those who were barred included not only the group of "regulars" who had been laid off the previous day, but also some "seasonal" employees who were on the seniority list (R. 69; 255-256, 346, 348-349, 391-392, 403-404, 437-438). When the excluded employees sought to force the picket line a scuffle ensued and Factory Superintendent Fordham was called (*ibid.*). Meanwhile, inside the cannery, Assistant Superintendent Gallardo canvassed those employees who had been allowed to pass through the picket line, to determine whether they were members of the A. F. L. in good standing (R. 69; 333-334, 340-344). Those who were not were ordered out of the plant after being told they could not work until they had been cleared by the A. F. L. (*ibid.*). As these employees left the plant they joined the group which had been stopped at the entrance and which Superintendent Fordham was addressing at that time (R. 69; 333-334, 340-344, 346-349, 391-392, 401, 425-426). Fordham told the entire group that unless they paid up their dues in the A. F. L. they would have to get off respondent's premises (*ibid.*). Pursuant to Fordham's orders, all those present, both the "regular" employees mentioned above (*supra*, the following day (see n. 16, p. 13, *infra*,) the record does not show whether the respondent discharged the other 9 employees on the A. F. L.'s list.



pp. 11-12), and a number of "seasonal" workers on the seniority list, left respondent's premises (*ibid.*).<sup>16</sup>

(2) *The discharge of Employees Frischknecht and McVay.*—The facts in connection with the discharge of Employee Harlie Frischknecht actually differ in no material way from those surrounding the discharge of the other employees discussed above. Through what appears to have been an oversight, the A. F. L. omitted Frischknecht's name from the letter in which it demanded the discharge of all the employees on the warehouse crew who had been suspended from the union for non-payment of dues (R. 73; 251-252, 492, *supra*, p. 11). Instead of the name "Harlie Frischknecht" the A. F. L. listed a "Harlie Cruikshank," although there was no person of that name employed by respondent (R. 71; 250-253). It is clear, however, as the Board found (R. 34, 70-73), that the A. F. L. intended that Frischknecht be included on this list and that the respondent did, in fact, lay him off on November 20.

Frischknecht's position was identical with that of all the other "regular" employees on the list. Although he had joined the A. F. L. when first hired (R. 71; 354), he had, in August 1945, like his fellow workmen in the warehouse, revoked a check-off author-

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<sup>16</sup> The seasonal workers who were thus discharged included, as the Board found (R. 34, 70, 116), the following ten employees: Clemmie Robinson, Monroe Robinson, Thomas L. Broll, Ruth Waite, Agnes Hopkins, Myrtle Brown, Genevieve Alsup, Margurite Watts, Clifford C. Luther, and R. E. Rearick (R. 333-334, 340-344, 346-349, 425-426). With the exception of Clifford Luther, none of these employees was on the list of those whose discharge the A. F. L. demanded (R. 251-252).

ization to the A. F. L., and from that time forward paid no dues to the A. F. L. (R. 71-73; 354-355, 360). Consequently, when President Hume, on November 20, assembled the warehousemen and read off the names of those whose discharge the A. F. L. had requested, Frischknecht joined his fellow employees as they left the cannery (R. 71-72; 356-357; *supra*, pp. 11-12). The following day Frischknecht was with the group which sought to go through the A. F. L. picket line at the plant and to which Superintendent Fordham offered the choice of paying up their A. F. L. dues or leaving the premises (R. 72-73; 359-360).

On November 26, Frischknecht returned to the plant (R. 72-73; 356, 358). After the plant manager made a cursory check of the A. F. L. list of proscribed employees and could not find Frischknecht's name on it, he let Frischknecht go to work (R. 72-73; 356). Frischknecht was at work only a short while when an A. F. L. representative informed him that he would have to pay up his dues and clear himself with the A. F. L. if he wanted to continue working in the plant (R. 72-73; 357-358). Frischknecht thereupon left the plant (*ibid.*). The union representative's assertion was verified by Frischknecht's supervisor, Orville Hopkins, who later told him that in order to work at the plant he must "sign up with the A. F. L. (R. 73; 367-368).

These facts support the Board's finding that Frischknecht's termination of employment actually took place on November 20, 1945 (R. 34, 73). Being one of those delinquent in dues to the A. F. L., he had every reason to believe that respondent's announce-

ment of the discharges applied to him, as well as to the rest of the "regular" employees. And, indeed, respondent believed the same; for President Hume testified that on November 20 he had discharged all the warehouse employees because "it was assumed that the whole warehouse [crew] was on the [A. F. L.] list" (R. 492).

The only other discharge involved in this case, that of Clarence McVay, a "seasonal" employee, took place on December 7, 1945 (R. 74, 371-376). Other than the difference in point of time, the facts with respect to McVay's discharge are substantially the same as those surrounding the others. McVay had revoked a dues check-off authorization that he had signed on first reporting for work and had never paid any dues to the A. F. L. (R. 74; 371-372). On December 7, an A. F. L. representative approached him while at work and requested him, in the presence of his foreman and President Hume, to pay up his union dues (R. 74; 371-375). President Hume advised McVay that he "might just as well sign up" (R. 74; 374). McVay, however, refused and was immediately dismissed (R. 74; 373-375). On these facts the Board's finding that McVay was discharged on that day for failure to maintain his membership in the A. F. L. is not open to dispute (R. 34, 74; 115-116).

*(c) The subsequent dispute between respondent and the A. F. L. as to whether the Master Agreement requires maintenance of a closed-shop*

Early in February 1946, respondent rehired a number of the employees it had discriminatorily discharged the previous November, allegedly in accordance with

the Master Agreement, for failing to maintain membership in the A. F. L. (R. 76; 449, 261, 263-264, 334-335, 393-394). Although, at the time of the rehiring, respondent considered the Master Agreement still in effect, these employees were rehired despite the fact that they had not paid union dues since June 1945 and, hence, were not members in good standing (R. 76; 263-264, 276, 334-335, 362-364, 393). Respondent's reversal of position with respect to the requirements of the Master Agreement provoked an immediate protest from the A. F. L. that respondent was violating the Agreement (R. 77-79; 448-451). As a result of the A. F. L.'s complaint a union-management grievance committee, known as the Central Adjustment Board, was called upon to settle the dispute (*ibid.*). The Central Adjustment Board, composed of an equal number of representatives of the C. P. & G. and of the A. F. L., was established pursuant to the Master Agreement to adjust grievances which could not be satisfactorily adjusted by the individual companies (R. 77; 622-625). The contract provided that its decisions be final and binding upon the parties concerned except in the event of a deadlock, in which case a mutually satisfactory outside person could be called upon to make the decision (*ibid.*).

On February 8, 1946, the Central Adjustment Board met to hear the A. F. L. complaint (R. 77; 448-451). The question for decision, as it was framed for a final vote by that board, was as follows (*ibid.*):

Whether the G. W. Hume Co. \* \* \* in accordance with the terms of the collective bargaining agreement between [the C. P. & G. and

A. F. L.], and/or the past practices of the union and the plant management, is required to maintain a union shop.

A secret ballot resulted in a four-to-four tie vote, whereupon the parties agreed that the United States Conciliation Service be called upon to name an arbitrator (R. 78; 445-446, 448-451). On April 3, 1946, however, the individual whom the Conciliation Service so designated declined to serve (R. 79; 452-454). At the time of the hearing before the Trial Examiner no other arbitrator had been appointed and no further action had been taken by the Central Adjustment Board (R. 79; 206, 555).

3. The representation proceeding and respondent's execution of a closed-shop contract with the A. F. L. during its pendency

As we have seen (*supra*, pp. 6-7), in July 1945, the C. I. O. filed a petition with the Board alleging that a question affecting commerce had arisen concerning the representation of a number of west coast packing plants, including respondent's plant (R. 63-64; 569-570). During July, August, and September, 1945, pursuant to appropriate orders of the Board, consolidated hearings, in which the various employers involved were represented, were held on these petitions in a proceeding known as the *Matter of Bercut-Richards Packing Co. et al.* (R. 63-64; 568-594), 64 N. L. R. B. 133. At the hearing on the petitions, the A. F. L. contended that the Master Agreement constituted a bar to the representation proceeding and urged that the Board dismiss the petitions (64 N. L. R. B. 133, 135).

On October 5, 1945, the Board issued a telegraphic decision and order directing an election in the consolidated cases (R. 64; 570). The Board found that since the Master Agreement was to expire within a short time, it did not constitute a bar to the representation proceeding which was designed to determine the employees' representatives for the period succeeding the termination of the Master Agreement (R. 571-573; 64 N. L. R. B. 133, 135).<sup>17</sup> On October 17, 1945, pursuant to the Board's order, the Regional Director conducted an election among the employees in the plants involved (R. 64; 243-244).<sup>18</sup>

The A. F. L. filed objections to all the elections held pursuant to the *Bercut-Richards* decision, including the election held among the group including respondent's employees (R. 64; 596-607). On January 16, 1946, the Regional Director issued his Report on Objections to the election (R. 80; 596). On February 15, 1946, after a hearing on the objections, the Board issued a Supplemental Decision and Order in the consolidated cases vacating and setting aside all the elec-

<sup>17</sup> The Board subsequently, on October 12, 1945, issued a formal Decision, Direction of Election, and Order consonant with the determination and findings made in the telegraphic decision. 64 N. L. R. B. 133.

<sup>18</sup> The tally of the votes at the elections of the employees of the member companies of the C. P. & G. showed (R. 65; 611):

Approximate number of eligible voters.....	23, 545
Valid votes counted.....	10, 968
Votes cast for California State Council of Cannery Unions, A. F. L.....	4, 701
Votes cast for F. T. A.-C. I. O.....	6, 067
Votes cast for Cannery and Food Process Workers Council of the Pacific Coast, Independent.....	110
Votes cast against participating labor organizations.....	90
Challenged ballots .....	1, 291
Void ballots .....	248

tions as inconclusive, principally on the ground that they were not "attended by such procedural safeguards or certainty concerning eligibility as to constitute a proper foundation for a Board certification" (R. 80-83; 604, 595-614). Since, by reason of the seasonal nature of the canning industry, it would be several months before the spring season reached its peak (R. 82; 605), the Board stated that new elections would be held as early in the 1946 season as there was substantial employment, or even sooner, if adequate voting lists could be prepared (*ibid.*). The Board then declared (R. 81-82; 605-606):

While we view the record as requiring this result we reach it with considerable reluctance because it means that the employees will have no bargaining representative to negotiate an exclusive collective agreement to cover the coming season, until a new election can be held which may result in one of the rival unions being certified. The current AFL contract will expire on March 1 and since the legal effect of the foregoing determination is to keep the question of representation pending before the Board, none of the unions is entitled to an exclusive status as the bargaining agent, after that date. In accordance with well-established principles,<sup>14</sup> the employers may not, pending a new election, give preferential treatment to any of the labor organizations involved, although they may recognize each one as a representative of its members. In this state of the record, no legal effect may be given the closed-

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<sup>14</sup> See *Matter of Midwest Piping & Supply Co., Inc.*, 63 N. L. R. B. No. 163; see also *Matter of Ken-Rad Tube & Lamp Corp.*, 62 N. L. R. B. 21.

shop provision contained in the current collective agreements after their expiration date,<sup>15</sup> the inclusion of any such provision in any new agreements, or action pursuant thereto, would clearly be contrary to the proviso in subsection 8 (3). Nothing in our decision, however, should be construed as requiring any change in the substantive conditions now existing by virtue of the foregoing agreements.

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<sup>15</sup> Moreover, no requests for discharges resulting from activity in the election are justified even under the present agreement. See *Matter of Rutland Court Owners*, 44 N. L. R. B. 587, 46 N. L. R. B. 1040.

Despite the fact that, shortly after its issuance, respondent received a copy of the Board's Supplemental Decision admonishing all employers affected by the *Bercut-Richards* decision not to renew, or effect, any exclusive recognition or closed-shop contracts while the representation question was pending (R. 83; 188-189, 442-443), respondent, on March 25, 1946, while the representation question was still pending,<sup>19</sup> entered into a closed-shop contract with the A. F. L. (R. 83-84; 219-220, 487-489). Specifically, the contract, of indefinite duration, required that all employees become and remain members of the A. F. L., or be discharged within 36 hours after notice to respondent of their failure to comply, and that, in the hiring of new employees, preference be given unem-

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<sup>19</sup> The representation question in the *Bercut-Richards* case is still unsettled. In accordance with its Supplemental Decision therein, the Board conducted a new election in the affected plants in August and September 1946. Objections to this election were filed, subsequently, by the C. I. O. On the basis of these objections, the Board has conducted an extensive investigation of the election but, to date, has not arrived at a decision as to the merits of the objections.



ployed members of the A. F. L. (R. 83-84; 219-220).<sup>19(a)</sup> Admittedly, respondent has enforced and given effect to this agreement since its consummation (R. 489-490). Moreover, it is admitted that after March 1, 1946, respondent permitted A. F. L. representatives free access to the cannery for the purposes of collecting dues and soliciting memberships, while at the same time denying like privileges to representatives of the C. I. O. (R. 111; 264-266; 424-425).

### **B. The Board's decision and order**

The Board found, on the facts related above, that respondent's discharge of the 29 employees for failure to maintain membership in the A. F. L. was not protected by the Master Agreement under the proviso to Section 8 (3) of the Act, and was, therefore, a violation of Section 8 (3) and (1) of the Act (R. 34, 36-37, 98). The Board further found (R. 34, 111), that respondent had, in violation of Section 8 (1) of the Act, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act, by urging its employees to become and remain members in good standing in the A. F. L., by requiring, as a condition of employment, the employees on the seniority list to obtain new clearance slips from the A. F. L., by permitting representatives of the A. F. L. access to its cannery after March 1, 1946, while denying like privileges to representatives of the C. I. O. (R. 34, 111), and by granting on March 25, 1946, exclusive recognition and a closed-

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<sup>19(a)</sup> Respondent executed this closed-shop contract on the very first day of the spinach canning season, without requiring proof of majority from the A. F. L. (R. 484; 487-489).

shop contract to the A. F. L. at a time when respondent knew that a representation question was pending before the Board (R. 35, 98-111).

The Board's order requires respondent to cease and desist from its unfair labor practices, to reinstate with back pay those of the 29 employees whom it discriminatorily discharged and who had not been previously rehired, to make whole with back pay those who had been rehired, to cease giving effect to the closed-shop contract, to withhold exclusive recognition from the A. F. L. unless and until the A. F. L. shall have been certified by the Board as the exclusive representative of the employees, and to post appropriate notices (R. 38-45).<sup>20</sup>

#### SUMMARY OF ARGUMENT

I. The Board properly concluded that the discriminatory discharges, allegedly made in accordance with the Master Agreement, were not protected under the proviso to Section 8 (3), but were in violation of Section 8 (3) of the Act.

II. The Board properly concluded that respondent violated Section 8 (1) of the Act:

(a) By rendering assistance to the A. F. L.

(b) By entering into a closed-shop contract with the A. F. L. when a representation question affecting its employees was pending before the Board.

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<sup>20</sup> The Board, like the Trial Examiner, dismissed those allegations of the complaint which averred that the California Processors and Growers, Inc., violated the Act (R. 34). The Board also dismissed without prejudice the allegations of the complaint insofar as it alleged that respondent had discriminatorily discharged one John M. Smith in violation of Section 8 (3) and (1) of the Act (*ibid.*).

## ARGUMENT

## POINT I

The Board properly concluded that the discriminatory discharges, allegedly made in accordance with the Master Agreement, were not protected under the proviso to Section 8 (3), but were in violation of Section 8 (3) of the Act

A. The Master Agreement affords respondent no protection for the discrimination engaged in

Section 8 (3) of the Act, apart from the proviso thereto, makes it an unfair labor practice for an employer "By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization \* \* \*." The proviso to Section 8 (3) allows an exception to this broad proscription by permitting an employer, within certain limits, to make "an agreement with a labor organization \* \* \* to require as a condition of employment membership therein \* \* \*." <sup>21</sup> There can be no question, therefore, but that if the Master Agreement, in alleged accordance with which respondent discharged 29 of its employees because they failed to

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<sup>21</sup> The proviso to Section 8 (3) reads in full as follows: "*Provided*, That nothing in this Act or in the National Industrial Recovery Act (U. S. C. Supp. VII, Title 15, secs. 701-712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a) in the appropriate collective bargaining unit covered by such agreement when made."

maintain membership in the A. F. L. (*supra*, pp. 10–15), did not condition their employment upon such membership, the discharges constituted an unlawful discrimination in violation of Section 8 (3) of the Act. *N. L. R. B. v. Electric Vacuum Cleaner Co., Inc.*, 315 U. S. 685, 692–695; *N. L. R. B. v. Waterman Steamship Corporation*, 309 U. S. 206, 211–213; *N. L. R. B. v. Mason Mfg. Co.*, 126 F. 2d 810, 813–814 (C. C. A. 9); *South Atlantic Steamship Co. v. N. L. R. B.*, 116 F. 2d 480, 482 (C. C. A. 5), certiorari denied, 313 U. S. 582.

Thus, the single question presented by this phase of the case is whether the Master Agreement was a closed-shop contract, i. e., whether, in the language of the proviso to Section 8 (3) of the Act, it *required* of the employees discriminated against, membership in the A. F. L. “as a condition of employment.” The language of the Master Agreement, we submit, not only supports the Board’s finding that “nothing” therein “required the employees in question to maintain their union membership as a condition of continued employment with respondent” (R. 36), but permits no other construction.

**1. *The terms of the Master Agreement did not condition employment upon union membership***

The portions of the Master Agreement (R. 615–648) which deal with the matters of hiring practices and the employer’s obligations in connection with the union membership status of his employees are as follows (R. 617–618):

### SECTION 3. PREFERENCE OF EMPLOYMENT AND HIRING PRACTICES.

(a) It is recognized that the refusal of Union members to work with non-union employees who are within the jurisdiction of the local union shall not constitute a violation of this agreement, provided, however, that before any strike action, job action, or other direct action is taken on this account, the local Union will submit the matter for adjustment as provided in Section 8 hereof.<sup>22</sup> In order to aid in the prompt adjustment of such matters, the Union shall furnish its members with a clearance card, dues book or other evidence of paid-up membership, and *when employees who are on the seniority lists, as defined in Section 9 hereof,*<sup>23</sup>

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<sup>22</sup> Section 8 establishes the grievance procedure and provides for the ultimate disposition of grievance questions by arbitration if necessary (R. 622-626).

<sup>23</sup> Section 9 relates to the establishment of a seniority roster and provides, in part, as follows (R. 626-628) :

“(b) All jobs shall be filled and rehiring shall be from the regular list in the order of seniority, and thereafter all vacancies in positions of regular and seasonal employment shall be filled from the seasonal list in the same order \* \* \*. Similarly, lay-offs for lack of work shall be made in the reverse order of seniority \* \* \*.

“In rehiring new employees, the procedure and preferences provided in Section 3 hereof shall be followed \* \* \*.

\* \* \* \* \*

“(d) In each plant employees shall be divided into two (2) groups as follows: Regular employees and seasonal employees, all to be listed on one seniority roster for said plant.

“(e) Regular employees are those who have worked in a given plant at least forty (40) weeks out of the fifty-two (52) weeks during the preceding calendar year.

“Seasonal employees are those other than regular employees who worked in a given plant at least sixty (60) percent of the total number of operating days of said plant during the previous season.”

*are called to work, the Employer will request that such evidence be presented by those who have it, and will keep a record, which will be available to the Union, of all employees who do not present such evidence. Similarly the Union will from time to time, when such information is available, notify the Employer of the names of delinquent or suspended members, or other non-union employees, according to Union records.*

The Employer shall be the sole judge of the qualifications of all its employees, subject to appeal as provided in Section 8 hereof, but in the selection of *new employees* the Employer will give *preference of employment to unemployed members of the local union*, provided they have the necessary qualifications and are available when new employees are to be hired. "New employees," for the purpose of this agreement, are defined to be persons who are not on the seniority list of the hiring plant, as defined in Section 9 hereof, even though they may have been employed previously by said plant. As a basis for preferential consideration as new employees as aforesaid, unemployed members of the local union shall be required to present a clearance card from the local union evidencing the fact of their paid-up membership. [If such union members are not available for such employment, the Employer may hire any person not a member of the Union provided that such person will be required to file an application for membership in the local union before being put to work. Upon filing such application he

shall receive from the Union a written statement that he has made such application, which statement shall be taken up by the Employer and returned to the Union when the applicant is put to work. It is further understood that such person must become a member of the local union within ten (10) days after his employment, and that the local union will not reasonably refuse to accept such person as a member.] [Italics added.]<sup>24</sup>

Subsection (b) of Section 3 of the Agreement provides for the mechanics of carrying out the foregoing and requires the contracting local union to have a representative available in the plant to receive the applications from new employees (R. 619-622). In this subsection "the local union agrees to assume responsibility for completing the matter of subsequent affiliation by new workers as members of the Union" (R. 622).

Section 3 of the Agreement, as its title suggests, focuses upon the proposition that the employer will give *preference* to union members in hiring *new* employees. Nothing in the Agreement so much as suggests that *old* employees, that is, employees on the seniority list,<sup>25</sup> are required, as a condition of contin-

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<sup>24</sup> The matter in brackets is a modification made on or about July 10, 1943, due to the then existing manpower shortage, to permit the canneries to hire during the 1943 canning season "emergency workers" who, however, had to file an application for membership in the local union of the Council or obtain an "emergency card" therefrom before being allowed to work (R. 618, 640-646).

<sup>25</sup> As shown above (*supra*, pp. 9-13), all of the employees whose discriminatory discharges are involved herein were old employees on the seniority list.

ued employment, either to join the A. F. L. or to maintain their memberships if they had joined in the past. The only provision in the Agreement requiring union membership of *any* employee is the second paragraph of Section 3 (a) which provides (1) that unemployed members of a local must show a clearance card “evidencing the fact of their paid-up membership” before they are eligible for “preferential consideration as new employees” (*supra*, p. 26), and (2) that a new non-union member employee, hired to fill a job for which a union member was not available, “must become a member of the local union within ten (10) days after his employment” (*ibid.*). Even these provisions affecting new employees, however, do not require such employees to *maintain* their union membership in the future as a condition of continued employment.

The provision in section 3 (a) of the Agreement that a refusal on the part of union members “to work with non-union employees \* \* \* shall not constitute a violation of this agreement,” is the only portion of this section of the Agreement applicable to employees on the seniority list (*infra*, p. 29).<sup>26</sup> And there is absolutely no indication therein that such employees are required to join, or maintain membership in, the union as a condition of employment. The provision does nothing more than preserve to union members the right to strike in protest against being required to work with non-union employees, and to do

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<sup>26</sup> If the Master Agreement were truly a closed-shop contract this provision clearly would be meaningless, for no employees who were not members of the union would be permitted to work in the plant.



so without having such strike action constitute a violation of the Master Agreement. And even this right is qualified by the proviso that any dispute in this connection must be submitted for adjustment through the contractual grievance procedure, before any direct action may be taken by the union or its members. "In order to aid in the prompt adjustment of such matters," the Agreement provides that the union will furnish all its members with a clearance card "or other evidence of paid-up membership," and that the employer, upon recalling to work employees "who are on the seniority lists," will report to the union all such employees who do not present evidence of union clearance. Presumably as a cross-check to keep the records straight, the Agreement provides also that the union will, in turn, inform the employer of delinquent or suspended members.

This is a far cry from an agreement providing for the maintenance of a closed-shop. Whatever else these terms of the Agreement may stand for, they certainly do not provide that employees on the seniority list must maintain membership in the union or else be subject to discharge from their jobs. Indeed, neither respondent nor the A. F. L. contend to the contrary. Respondent, in fact, has conceded that the Board's interpretation of the language of the Agreement is correct. For, in January 1946, in oral argument before the Board in the *Bercut-Richards* case (R. 214), which, as we have seen (*supra*, pp. 18-20), also involved the Master Agreement, respondent's

counsel<sup>27</sup> declared that the language of “the contract itself does not expressly require that we discharge people for not maintaining good standing in the union.” Respondent’s counsel affirmed this appraisal of the terms of the Master Agreement in the hearing before the Trial Examiner in the instant case (R. 198–200). While the A. F. L. has made no such forthright concession, it has, at no point in the instant case, urged before the Board that the language of the Agreement conditioned continued employment of employees on the seniority list upon membership in the A. F. L. And even in its relations with the various employers who were parties to the Master Agreement, the A. F. L., according to the secretary-treasurer of the local at the Hume plant at that time (R. 96; 285–286), apparently insisted that it was a closed-shop agreement, only “when they could get away with it” (R. 96; 298–300).

The fact that the terms of the Master Agreement do not make continued employment of employees on the seniority list contingent upon membership in the A. F. L. is, we submit, decisive of the propriety of the Board’s finding that respondent violated Section 8 (3) of the Act when it discharged the 29 employees on the seniority list because they failed to maintain membership in the A. F. L.

The proviso to Section 8 (3) of the Act, as we have noted, permits such discrimination against employees only where the employer and the union properly representing his employees have an agreement which makes union membership “a condition of employment.” *Matter of Iron Fireman Manufacturing Com-*

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<sup>27</sup> Mr. John Paul St. Sure, who is also respondent’s counsel in the instant case (R. 163).

pany, 69 N. L. R. B. 19, 20-21. The proviso is, in short, an exception to the statute's broad proscription of employer discrimination against employees because of their union affiliations or activity and, as such, is to be narrowly and strictly construed.<sup>28</sup> As the Supreme Court has declared, "These words of the exception must have been carefully chosen to express the precise nature and limits of permissible employer activity in union organization" (*N. L. R. B. v. Electric Vacuum Cleaner Co., Inc.*, 315 U. S. 685, 695). The Congressional purpose in including the proviso in the Act was not to "favor," "facilitate," or give "special legal sanctions" to closed-shop arrangements between unions and employers (Report of the Senate Committee on Education and Labor, 74th Cong., 1st Sess., S. Rep. No. 573, pp. 11-12).<sup>29</sup> The purpose was simply to

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<sup>28</sup> The cases abound which lay down the fundamental principle that such a proviso must be strictly construed and that one seeking to come within the exception must comply strictly with the words as well as the reason for the proviso. See, e. g. *Hartford Electric Light Co. v. Federal Power Commission*, 131 F. 2d 953, 962 (C. C. A. 2), certiorari denied, 319 U. S. 741; *Great Atlantic & Pacific Tea Co. v. Federal Trade Commission*, 106 F. 2d 667, 674 (C. C. A. 3), certiorari and rehearing for certiorari denied, 308 U. S. 625, 309 U. S. 694; *Fleming v. Hawkeye Pearl Button Co.*, 113 F. 2d 52, 56 (C. C. A. 8); *U. S. v. Dickson*, 40 U. S. 141, 165; *Canadian Pac. Ry. Co. v. U. S.*, 73 F. 2d 831, 834 (C. C. A. 9); *Rochester Telephone Corporation v. U. S.*, 23 F. Supp. 634, 636 (D. C. N. Y.), aff'd 307 U. S. 125; *Spokane & Inland R. R. v. U. S.*, 241 U. S. 344, 350; *Thomas Basham Co. v. Lucas*, 21 F. 2d 550, 551 (D. C. Ky.), aff'd 30 F. 2d 97 (C. C. A. 6). The limited scope and application of the proviso is clearly indicated by the Senate and House Reports on the bill before its enactment. Senate Rep. No. 573, 74th Cong., 1st Sess., pp. 11-12; H. Rep. No. 1147, 74th Cong., 1st Sess., pp. 19-20.

<sup>29</sup> To the same effect, H. Rep. No. 1147, 74th Cong., 1st Sess., pp. 19-20.

*permit* the making of a “traditional \* \* \* closed-shop agreement” within the bounds of the basic policies of the Act (S. Rep., pp. 12, 13). The Board and the courts, therefore, have read the proviso, not in isolation, but in conjunction with the Act as a whole, and have held, indeed, that even employer discrimination which might appear to be protected by the letter of the proviso is not permissible where it would result in a denial to employees of the fundamental freedom to select representatives, and the protection against discrimination, which the Act as a whole was designed to afford. *Wallace Corporation v. N. L. R. B.*, 323 U. S. 248, 256; *Local 2880 v. N. L. R. B.*, 158 F. 2d 365, 368-369 (C. C. A. 9), certiorari granted, 65 S. Ct. 1305; *N. L. R. B. v. American White Cross Laboratories, Inc.*, 160 F. 2d 75 (C. C. A. 2). In the instant case, where even the *letter* of the proviso was not satisfied (*supra*, pp. 24-30), it follows *a fortiori* that respondent can find no protection in the proviso for the discrimination in which it has engaged.

**2. *The parties did not treat the Master Agreement as a closed-shop contract***

In view of the considerations discussed immediately above, it clearly would be against everything the Act stands for to strain the terms of the Agreement and the conduct of the parties thereto, in order to wring out a construction which would excuse the discrimination worked upon respondent's employees. But that is precisely what respondent and the A. F. L. seek to do. For their real contention is that, even if the Master Agreement was not a closed-shop agreement,

on its face, the parties treated it as such and, therefore, respondent's discriminatory action is protected by the proviso to Section 8 (3) of the Act (R. 550, 554). This contention is wholly without merit. In the first place, as the Board found (R. 36-37, 95-98), the parties did not treat the Master Agreement as a closed-shop contract and, in the second place, even if they had done so, their conduct could not alter the effect of the unambiguous written terms of the Agreement so as to bring it within the protection of the proviso.

The record herein shows beyond dispute that, as the Board found (R. 34, 36-37, 95-98), the Master Agreement was not, either by mutual consent or custom, regarded by the parties as requiring membership in good standing in the local union as a condition of employment. Nor is the basis for this finding offset by evidence that Assistant Superintendent Gallardo had, at the instance of the A. F. L., from time to time between 1941 and 1944, informed employees that they could not work at the Hume plant unless they had clearances from that union and that such employees either did not report for work again or obtained clearances (R. 472-474). Wesley King, business agent for Local 22382 during 1943 and 1944 (R. 520-522), could recall only two instances of an employee having been dismissed at the behest of the A. F. L., and in those cases the workers involved were *new* employees who were discharged, in strict compliance with the specific provisions of the Master Agreement (R. 618, 622), because they failed to complete their applications for membership in the A. F. L.

within 10 days of their initial employment (R. 520-523). And according to R. M. Tomson, for several years secretary-treasurer and business manager for the A. F. L. local at the Hume plant, only when the A. F. L. thought it could "get away with it" was a claim put forward that the Master Agreement was a closed-shop contract (R. 96; 300). He admitted, moreover, that the A. F. L. had sought a closed-shop contract from the C. P. & G. "every year," but that the cannery association would never grant it this concession (R. 96; 301-302, 311-312).

As we have seen (*supra*, p. 10), in November 1945, when the A. F. L. demanded that respondent give the Master Agreement the force and effect of a closed-shop contract by compelling employees who were on the seniority list to become members of the A. F. L., President Hume requested advice from the C. P. & G. and was told that the union demand was beyond the scope of the contract (*supra*, p. 10). It is undisputed that subsequent to the receipt of this advice respondent steadfastly refused to yield to any of the A. F. L.'s demands that it dismiss delinquent members, until several weeks later when respondent effected the discharges involved in this case (*supra*, p. 11).

It is likewise clear that the C. P. & G. did not regard the Master Agreement as a closed-shop agreement. We have already seen how it opposed such an interpretation in the fall of 1945 (*supra*, pp. 10-11). And it maintained this position consistently, for early in 1946, when the A. F. L. again attempted to "get away with" the claim that the Master Agreement provided for a closed shop, the determined opposition of the

respondent and the C. P. & G. to this interpretation resulted in an exhaustion of the grievance procedure set up by the Agreement for the settlement of disputes relating to construction of its terms (*supra*, pp. 15-17).

Moreover, after having yielded to the A. F. L. in making the discharges here involved, respondent reasserted its original position. Thus, in contrast with the A. F. L. claim that the Master Agreement imposed the requirement that respondent discharge employees who failed to maintain membership in the A. F. L., counsel for respondent subsequently stated before the Board that the language of the Agreement contained no such requirement (*supra*, pp. 29-30). And in February 1946, before the Central Adjustment Board, respondent's counsel stated that the discussions between respondent and the A. F. L. over Section 3 (a) of the Agreement (the preferential hiring section) had resulted "in no common agreement between union and employer representatives concerning [its interpretation]" (R. 449). Also, in February 1946, respondent, reversing the position it had taken when it discharged employees in November and December 1945, because they had not maintained membership in the A. F. L. rehired several of these employees, despite the fact that they had paid no dues to the A. F. L. since June 1945, and were not members in good standing (*supra*, pp. 15-16).

It is further significant that when the Master Agreement was amended in writing on three separate occasions (R. 615, 408), no change whatever was made in Section 3 (a) which deals with union mem-

bership requirements (R. 409-410, 617). Certainly, it may be assumed that if the parties had really been in agreement on the matter of maintaining a closed-shop, they would have embodied such agreement in the terms of their written contract itself at the first available opportunity, particularly since respondent concededly did not consider that the language of the Master Agreement provided for a closed-shop (*supra*, pp. 29-30). The conclusion is inescapable that the reason neither the Master Agreement nor the amendments thereto, included a closed-shop provision is that the parties, in fact, never reached an accord on this issue. That respondent and the A. F. L. understood the appropriate terminology to express an agreement to a closed-shop may be taken for granted. But, in any event, such understanding was clearly demonstrated by the parties when, on March 25, 1946, after having finally agreed to enter into a true closed-shop contract, they executed an agreement which stated that "It shall be a condition of employment with the employer that all employees covered by this agreement shall become and remain members of the Union in good standing", and further, that "Persons who fail to maintain good standing in Union \* \* \* shall be discharged within thirty-six (36) hours after the company is so notified by the Union" (R. 219-220).<sup>30</sup>

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<sup>30</sup> From what has been said above, it is apparent that the check-off arrangement effected by amendment of the Master Agreement in June 1945 (R. 408-420), was in no sense an agreement for a closed-shop. It provided for nothing more than voluntary check-offs revocable at the will of each individual employee (R. 410). This amendment superseded the earlier check-off agreement entered into between respondent and the A. F. L. in August 1944 (R. 408, 410, 216-218). That agreement provided for compulsory



From this record of continuing *disagreement* between respondent and the A. F. L. as to whether respondent was required, under the Master Agreement, to maintain a closed-shop, the parties now seek to construct an *agreement*. But nothing is clearer, we submit, than the fact that they have failed in their undertaking, and that respondent has failed to sustain its "burden of proof of a closed-shop agreement".<sup>31</sup> The truth is, as the Board found, that the Master Agreement was not "either by mutual consent or custom, regarded by the parties as one requiring membership in good standing in the local union as a condition of employment" (R. 98), that the A. F. L. pressed for a closed-shop construction only when it thought it could "get away with it" (R. 96), and that respondent effected the discriminatory discharges herein, not in accordance with its understanding of the requirements of the Master Agreement, but in surrender to the threat of economic retaliation by the A. F. L. (R. 88, 89, *supra*, pp. 11-12).<sup>32</sup> The fact is that

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check-off against *members* of the union, but contained no provision for compulsory membership in the union (R. 216-218). In any event, its provisions are immaterial since it was no longer in effect at the time of the discriminatory discharges herein, which occurred in November and December 1945 (*supra*, pp. 10-15).

<sup>31</sup> *N. L. R. B. v. Mason Mfg. Co.*, 126 F. 2d 810, 813 (C. C. A. 9).

<sup>32</sup> That threatened economic hardship may not excuse an employer from the consequences of his unfair labor practices is, of course, well settled. The Act "permits no immunity because the employer may think the exigencies of the moment require infractions of the statute." *N. L. R. B. v. Star Publishing Co.*, 97 F. 2d 465, 470 (C. C. A. 9); *McQuay-Norris Mfg. Co. v. N. L. R. B.*, 116 F. 2d 748, 752 (C. C. A. 7), certiorari denied, 313 U. S. 565; *N. L. R. B. v. Hudson Motor Car Co.*, 128 F. 2d 528, 532-533 (C. C. A. 6); *N. L. R. B. v. National Broadcasting Co., Inc.*, 150 F. 2d 895, 900 (C. C. A. 2).

the discharges were made, not in accordance with, but entirely outside of, the requirements of the Master Agreement.

**3. *The conduct of the contracting parties could not bring the Master Agreement within the ambit of the proviso to Section 8 (3) of the Act***

In view of its unmistakably clear terms, the requirements of the Master Agreement may not be explained away or altered by reference to the conduct of the parties following its execution. It is elementary that, "if the meaning of the contract is plain, the acts of the parties cannot prove an interpretation contrary to the plain meaning" (3 Williston, *Contracts*, Rev. Ed., Sec. 623, pp. 1793-1794. *South Atlantic Steamship Co. v. N. L. R. B.*, 116 F. 2d 480, 482 (C. C. A. 5), certiorari denied, 313 U. S. 582), and that "The fact that the parties followed a different plan cannot work a revocation of the plain agreement" (*In re Chicago & E. I. Ry. Co.*, 94 F. 2d 296, 299 (C. C. A. 7)). *Railroad Co. v. Trimble*, 77 U. S. 367, 377; *Dant & Russel, Inc. v. Grays Harbor Exportation Co.*, 106 F. 2d 911, 912 (C. C. A. 9); *Lesamis et al. v. Greenberg*, 225 F. 449, 451-452 (C. C. A. 9); *Alaska Treadwell Gold Mining Co., et al. v. Alaska Gastineau Mining Co.*, 214 Fed. 718, 727 (C. C. A. 9), modified as to another point, 221 Fed. 1019 (C. C. A. 9), certiorari denied 238 U. S. 614; *Hutchinson Gas & Fuel Co. v. Wichita National Gas Co.*, 267 Fed. 35, 46 (C. C. A. 8).

Nor does the fact that respondent upon occasion, may have acquiesced in the A. F. L.'s demand for the discharge of a delinquent member (*supra*, pp. 33-34) establish a contractual modification of the Master Agree-

ment. Evidence of such conduct proves only a voluntary concession which respondent was not obligated to continue. *In re Desnoyers' Shoe Co.*, 227 Fed. 16, 18 (C. C. A. 7). The fact "that the [respondent] has done more \* \* \* than the letter of [its] obligation requires [cannot] be used to compel similar over-performance" of its obligation thereafter. *Liebeskind v. Mexican Light & Power Co.*, 116 F. 2d 971, 974 (C. C. A. 2).

Finally, the contention that, even though the terms of the Master Agreement did not condition employment by respondent upon A. F. L. membership, the discrimination exercised by respondent against its employees herein is protected by the proviso to Section 8 (3) of the Act, because the parties to the Agreement *treated it* as if it conditioned employment upon A. F. L. membership, leads to a circular argument which is invalid on its face. The argument is, in short, that since the parties were operating under the Master Agreement, and since respondent, in accordance with the request of the A. F. L., discharged employees who had been suspended from the union for non-payment of dues, the parties acted as they would have acted had the Master Agreement been a closed-shop contract, and the Agreement therefore, insofar as the parties were concerned, *was* a closed-shop contract.

The obvious fallacy in this argument is that respondent seeks to use the very conduct which constituted its violation of the Act, as an excuse for escaping responsibility for the violation. Acceptance of this argument would convert the proviso to Section 8 (3)

into a device which would permit an employer, acting together with the union representing his employees, to suspend at will the protection of Section 8 (3) so far as his employees are concerned. If the employer can point to the discrimination itself as justification for his action, the proviso to Section 8 (3) is reduced to an absurdity. Clearly the proviso was not designed to furnish any such loophole through which the protection afforded employees by Section 8 (3) might be so readily circumvented. See cases cited, *supra*, p. 31; see also, *Matter of Pittsburgh Plate Glass Co.*, 66 N. L. R. B. 1083, 1093-1095; *Matter of Iron Fireman Manufacturing Co.*, 69 N. L. R. B. 19, 20-21.

**4. The other contentions of respondent and the A. F. L. are without merit**

In its Supplemental Decision in the *Bercut-Richards* case (*supra*, p. 20) the Board, referring to the Master Agreement, stated that (R. 606):

\* \* \* No legal effect may be given the closed-shop provision contained in the current collective agreement after their expiration date \* \* \*.

From this the A. F. L. argues that the Board, prior to its decision in the instant case, had already determined that the Master Agreement was a closed-shop contract and was foreclosed from re-examining the nature of the Agreement in the instant case (R. 553-554).

The contention is entirely without merit. The *Bercut-Richards* case, unlike the instant case, did not involve an unfair labor practice, but was a representation proceeding under Section 9 of

the Act. The only issue before the Board in that case was whether the objections to the elections held by the Board were valid and warranted an order setting the elections aside (R. 595-614). The case involved no question as to whether or not the Master Agreement was a closed-shop contract and the Board had no occasion to pass upon, or to weigh fully the considerations, determinative of that question (*ibid.*). It is specious, therefore, to argue that the Board's passing reference to a "closed-shop provision" in the Agreement represented a commitment by the Board or a prejudgment of that question, should it ever arise, as it has now, in a subsequent unfair labor practice proceeding. Actually the statement in the *Bercut-Richards* decision was merely part of an admonition to the employers there involved that, while the representation question in that case was pending before the Board, they should avoid any acts of recognition or assistance to any labor organization (R. 605-607). The Board's use of the phrase "closed-shop provision" was clearly nothing more than a broad non-technical reference to the union-membership provisions in the preferential hiring section of the Master Agreement. As the Board observed in its decision herein (R. 94-95), the parties in the *Bercut-Richards* proceeding had similarly used the term "closed-shop" to describe contractual membership requirements generally. Moreover, since the discharges were made prior to issuance of the *Bercut-Richards* decision (*supra*, pp. 18-20), respondent could not have relied upon the Board's statement therein, or have been misled by it.

Nor is there merit to the contention urged before the Board by both respondent and the A. F. L. (R. 205-206, 555, 622-626), that the grievance procedure set up by the Master Agreement foreclosed the Board from assuming jurisdiction over the controversy involving these discharges. In addition to the fact that the question concerning these discharges never came before the Central Adjustment Board on the merits of the discharges but only on the question of whether respondent might rehire the dischargees without requiring clearance from the A. F. L. (*supra*, pp. 15-17; R. 445-446),<sup>33</sup> there is no valid basis for any such attack on the Board's jurisdiction in the instant case. Section 10 of the Act gives the Board exclusive power to determine what constitutes an unfair labor practice and provides that this power "shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law or otherwise" (49 Stat. 449, 29 U. S. C. Sec. 160 (a)). In the face of this direct Congressional mandate it is now too well settled for extensive argument that a private agreement to which the Board is not a party cannot operate to deprive the Board of its function under the Act. *N. L. R. B. v. Walt Disney Productions*, 146 F. 2d 44, 46-48 (C. C. A. 9), certiorari denied, 324 U. S. 877; *N. L. R. B. v. Poultrymen's Service Corp.*, 138 F. 2d 204, 210-211 (C. C. A.

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<sup>33</sup> It is to be noted, moreover, that at the time the Board issued its complaint herein, the arbitration machinery had broken down, as the Board observed (R. 91-92). The individual whom the parties had designated as arbitrator had declined to serve (*supra*, p. 17).

3); *N. L. R. B. v. Federal Engineering Co.*, 153 F. 2d 233, 234 (C. C. A. 6); *N. L. R. B. v. Prettyman*, 117 F. 2d 786, 792 (C. C. A. 6); cf. *May Department Stores Co. v. N. L. R. B.*, 326 U. S. 376, 392; *Wallace Corp. v. N. L. R. B.*, 323 U. S. 248, 253-255.

## POINT II

### **The Board properly concluded that respondent violated Section 8 (1) of the Act**

**A. Respondent violated Section 8 (1) of the Act by rendering assistance  
to the A. F. L.**

The Board found (R. 34, 111) that respondent violated Section 8 (1) of the Act by urging its employees to become and remain members in good standing in the A. F. L. (*supra*, pp. 7-10), by granting access to its cannery after March 1, 1946, to representatives of the A. F. L. while denying like privileges to representatives of the C. I. O. (*supra*, p. 21), and by requiring, as a condition of employment, that employees on the seniority list obtain new clearance slips from the A. F. L. (*supra*, pp. 8-10). In the absence of a valid closed-shop contract, as was the case here (*supra*, pp. 23-44), there is no question but that such conduct by an employer constitutes interference, restraint, and coercion within the meaning of Section 7, and in violation of Section 8 (1) of the Act. *N. L. R. B. v. Electric Vacuum Cleaner Co.*, 315 U. S. 685, 693, 695; *N. L. R. B. v. Link-Belt Co.*, 311 U. S. 584, 601; *Int'l Ass'n of Machinists v. N. L. R. B.*, 311 U. S. 72, 78, 80; *N. L. R. B. v. Waterman Steamship Corp.*, 309 U. S. 206, 224-226; *N. L. R. B. v. Cowell Portland Cement Co.*,

148 F. 2d 237, 242-243 (C. C. A. 9); *South Atlantic Steamship Co. v. N. L. R. B.*, 116 F. 2d 480, 482-483 (C. C. A. 5), certiorari denied, 313 U. S. 582; *N. L. R. B. v. American Car and Foundry Co.*, 161 F. 2d 501, 503 (C. C. A. 7).

**B. Execution of the closed-shop contract of March 25, 1946, constituted a violation of Section 8 (1) of the Act**

The Board found that respondent, by conferring exclusive recognition upon the A. F. L. and by entering into a closed-shop contract with it, on March 25, 1946, while a representation question affecting respondent's employees was pending before the Board, interfered with its employees' exercise of their freedom of choice of representatives, in violation of Section 8 (1) of the Act (R. 34-35, 98-111). The legal considerations involved in this phase of the case are, as the Board noted (R. 35), identical with those involved in *Matter of Flotill Products, Inc.*, 70 N. L. R. B. 119. Since the latter case is now pending argument before this Court as *N. L. R. B. v. Flotill Products, Inc.*, No. 11,449, we respectfully refer the Court to the Board's brief therein (pp. 8-31) for a discussion of the validity of the Board's finding described above.<sup>34</sup>

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<sup>34</sup> The Board's brief in the *Flotill Products* case is now on file with the Clerk of the Court, and the Board will serve the parties herein with copies of the *Flotill Products* brief at the same time the instant brief is served.



## CONCLUSION

It is respectfully submitted that the Board's findings are supported by substantial evidence, that its order is valid,<sup>35</sup> and that a decree should issue enforcing the order in full.

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DECEMBER 1947.

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<sup>35</sup> Since the respondent failed to challenge the validity of the order before the Board, the propriety of the order is not now open to review. *N. L. R. B. v. Cheney California Lumber Co.*, 327 U. S. 385; *N. L. R. B. v. Kinner Motors, Inc.*, 154 F. 2d 1007 (C. C. A. 9); *N. L. R. B. v. Van de Kamp's Holland Dutch Bakeries*, 154 F. 2d 828 (C. C. A. 9). In any event, the validity of the order (R. 38-45) on the findings made is well established. *N. L. R. B. v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265; *Phelps-Dodge Corp. v. N. L. R. B.*, 313 U. S. 177, 187-189, 197; *Int'l Ass'n Machinists v. N. L. R. B.*, 311 U. S. 72, 75, 81-83.

## APPENDIX

The relevant provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C., Sec. 151, *et seq.*) are as follows:

### FINDINGS AND POLICY

SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

SEC. 2. When used in this Act—

(6) The term “commerce” means trade, traffic, transportation, or communication among the several states, or between the District of Columbia or any Territory of the United States or any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

#### RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through

from engaging in any unfair labor practice (listed in Section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

\* \* \* \* \*

(e) The Board shall have power to petition any circuit court of appeals of the United States wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order. \* \* \* The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinbefore provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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NATIONAL LABOR RELATIONS BOARD,  
Petitioner,  
vs.

SCIENTIFIC NUTRITION CORPORATION,  
d/b/a Capolino Packing Corporation,  
Respondent.

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMER-  
ICA, AFL., and CALIFORNIA STATE  
COUNCIL OF CANNERY UNIONS, AFL,  
Intervenors.

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Transcript of Record

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Upon Petition for Enforcement of an Order of the  
of the National Labor Relations Board



No.11694

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United States  
Circuit Court of Appeals

For the Ninth Circuit.

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NATIONAL LABOR RELATIONS BOARD,  
Petitioner,  
vs.

SCIENTIFIC NUTRITION CORPORATION,  
d/b/a Capolino Packing Corporation,  
Respondent.

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMER-  
ICA, AFL., and CALIFORNIA STATE  
COUNCIL OF CANNERY UNIONS, AFL,  
Intervenors.

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Transcript of Record

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Upon Petition for Enforcement of an Order of the  
of the National Labor Relations Board

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the United States Circuit Court of Appeals  
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,  
Petitioner,

vs.

SCIENTIFIC NUTRITION CORPORATION,  
d/b/a Capolino Packing Corporation,  
Respondent.

CERTIFICATE OF THE NATIONAL LABOR  
RELATIONS BOARD

The National Labor Relations Board, by its Acting Chief of the Order Section, duly authorized by Section 203.67, Rules and Regulations of the National Labor Relations Board, Series 4, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of a proceeding had before said Board entitled, "In the Matter of Scientific Nutrition Corporation, d/b/a Capolino Packing Corporation, and Food, Tobacco, Agricultural and Allied Workers Union of America, CIO, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, Party to the Contract," the same being Case No. 20-C-1422 before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Copy of order designating Sidney Lindner Trial Examiner for the National Labor Relations Board, dated May 14, 1946.

(2) Stenographic transcript of testimony held before Trial Examiner Lindner on May 14, 1946, together with all exhibits introduced in evidence.

(3) Copy of Trial Examiner Lindner's Intermediate Report, dated June 20, 1946 (annexed to item 7 hereof); copy of order transferring case to the Board, dated June 24, 1946, together with copy of affidavit of service thereof.

(4) Copy of AFL's exceptions to the Intermediate Report.

(5) Copy of notice of hearing for the purpose of oral argument before the Board, dated September 17, 1946.

(6) Copy of list of appearances at oral argument held before the Board on October 1, 1946.

(7) Copy of decision and order issued by the National Labor Relations Board on December 13, 1946, with intermediate report annexed, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Acting Chief of the Order Section of the National Labor Relations Board, being thereunto only authorized as aforesaid, as hereunder set her hand and affixed the seal of the National Labor Relations Board in the city

of Washington, District of Columbia, this 18th day of July, 1947.

[Seal]      /s/ CLARA M. MARTIN,  
                 Acting Chief,  
                 Order Section.

BOARD'S EXHIBIT No. 1(a)

United States of America  
Before the National Labor Relations Board  
20th Region

Case No. 20-C-1422

Date Filed April 22, 1946

In the Matter of

SCIENTIFIC NUTRITION CORPORATION,  
d/b/a Capolino Packing Corporation,

and

FOOD, TOBACCO, AGRICULTURAL AND  
ALLIED WORKERS UNION OF AMER-  
ICA, CIO

THIRD AMENDED CHARGE

Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that Scientific Nutrition Corporation, d/b/a Capolino Packing Corporation, at Atwater, California, employing 200 workers in fruit and vegetable processing and canning, has engaged in and is engaging

in unfair labor practices within the meaning of Section 8 subsections (1) and (3) of said Act, in that on or about March 1, 1946, said Company granted exclusive recognition to, and renewed or executed a closed-shop collective bargaining agreement with a local of the Teamsters Union (AFL). At that time, there was a question of representation pending and unresolved before the National Labor Relations Board (Case No. 20-R-1464), of which the Company had notice and in which it had participated through its agents.

On or about June 22, 1945, said Company by its officers, agents and employees discharged Gus Cedar, a boiler room operator, because of his refusal to become or remain a member of said Teamsters' Union (AFL), and ever since has refused to reinstate him, in violation of Section 8, subdivision (3) of said Act.

Since May of 1945, said Company has required membership in said Teamsters' Local as a condition of employment.

By the acts set forth above and by granting access to its plant to representatives of said Teamsters' Local, by urging, persuading, and warning its employees to become and remain members of said Teamsters' Local, by other acts of preference and assistance and by other acts and statements, said Company by its officers, agents and employees has interfered with, restrained and coerced its employees in the exercise of their rights guaranteed in Section 7 of the said Act, in violation of Section 8, subdivision (1) of said Act.



The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

FOOD, TOBACCO, AGRICULTURAL & ALLIED WORKERS UNION OF AMERICA, CIO.

By /s/ BERTRAM EDISES,  
Attorney,  
150 Golden Gate Avenue,  
San Francisco, Cal.  
Telephone ORdway 9253.

Subscribed and sworn to before me this 22nd day of April, 1946, at San Francisco, Calif.

/s/ JOHN PAUL JENNINGS,  
Regional Attorney, NLRB,  
20th Region.

## BOARD'S EXHIBIT No. 1(b)

United States of America  
Before the National Labor Relations Board  
Twentieth Region

Case No. 20-C-1422

In the Matter of

SCIENTIFIC NUTRITION CORPORATION,  
d/b/a Capolino Packing Corporation,

and

FOOD, TOBACCO, AGRICULTURAL & AL-  
LIED WORKERS UNION OF AMERICA,  
CIO,

and

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMER-  
ICA, AFL,

Party to the contract.

## COMPLAINT

It having been charged by Food, Tobacco, Agri-  
cultural & Allied Workers Union of America, CIO,  
that Scientific Nutrition Corporation, d/b/a Capo-  
lino Packing Corporation, Atwater, California,  
hereinafter called the respondent, has engaged in  
and is now engaging in certain unfair labor prac-

tices affecting commerce as set forth in the National Labor Relations Act, 49 Stat. 449, herein called the Act, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twentieth Region as agent for the Board, designated by the Board's Rules and Regulations, Series 3, as amended, Article IV, Section 1, hereby issues its Complaint and alleges as follows:

### I.

The respondent, Scientific Nutrition Corporation, d/b/a Capolino Packing Corporation, is a New York corporation operating a plant at Atwater, California, where it is engaged in the business of processing and canning fruits and vegetables. The respondent, in the course and conduct of its business, causes, and at all times herein alleged continuously has caused in excess of 90 per cent of the products of its Atwater plant, valued at in excess of \$1,500,000 annually, to be sold and transported in interstate and foreign commerce from its Atwater plant to states and territories of the United States other than the State of California and to foreign countries.

### II.

Food, Tobacco, Agricultural & Allied Workers Union of America, CIO, hereinafter called the FTA-CIO, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union of America, AFL, hereinafter called the

Teamsters, and Cannery Workers Union, Local 22382, AFL, hereinafter called Local 22382, are, and at all times hereinafter mentioned have been, labor organizations within the meaning of Section 2(5) of the Act.

### III.

On or about May 8, 1945, and subsequent thereto, the respondent, through its officers and agents, engaged in a preconceived and continuous plan and course of action for the purpose of inducing its employees to change their affiliation from Local 22382 to the Teamsters. In furtherance of the plan and course of action, the respondent urged, persuaded, threatened, and warned its employees to become members of the Teamsters, permitted representatives of the Teamsters free entry into its plant to address and solicit its employees, and otherwise lent support to the Teamsters and assisted it in obtaining a majority of members among the respondent's employees. On or about May 18, 1945, the respondent entered into a contract with the Teamsters, recognizing that organization as the exclusive collective bargaining representative of the respondent's employees, and requiring membership in the Teamsters as a condition of employment. Thereafter, the respondent collected dues for the Teamsters by the institution of a payroll dues deduction system. At all times since May 18, 1945, the respondent has continued to enforce and give effect to its contract with the Teamsters.

## IV.

By reason of the aid and assistance granted by the respondent to the Teamsters, the latter is a labor organization assisted by unfair labor practices and the contract referred to in paragraph III and any renewal or extension thereof, is illegal.

## V.

On or about June 22, 1945, the respondent discharged its employee Gus Cedar and has at all times thereafter refused to reinstate said employee solely because he refused to join the Teamsters.

## VI.

On or about October 5, 1945, the Board directed that a collective bargaining election be held among the employees of the respondent at its Atwater, California, plant. Pursuant to said Direction, an election was conducted among the said employees of the respondent on or about October 16, 1945, in which the employees were given a choice of three labor organizations, including the FTA-CIO. On or about February 15, 1946, the Board issued a Supplemental Decision and Order in which it directed that the election held should be set aside and that a new election should be conducted.

## VII.

By all the acts of the respondent as set forth and described in paragraphs III, IV, V, and VI, above,

and by each of said acts, the respondent interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act, and by all of said acts and by each of them the respondent has engaged in, and is now engaging in unfair labor practices within the meaning of Section 8 (1) of said Act.

### VIII.

By negotiating the contract referred to in paragraph III, by requiring membership in the Teamsters as a condition of employment, by administering and enforcing said contract, and by discharging Gus Cedar as alleged in paragraph V, above, the respondent discriminated, and is now discriminating in regard to hire, and tenure of employment and terms or conditions of employment against its employees and thus has discouraged, and is now discouraging, membership in the FTA-CIO, and thus has encouraged, and is now encouraging membership in the Teamsters, and thereby has engaged in, and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

### VIII.

The activities of the respondent as set forth and described in paragraphs III through VII, inclusive, occurring in connection with the operations of the

respondent as described in paragraph I, above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and territories of the United States and with foreign countries and have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## XI.

The aforesaid acts of the respondent, as set forth in paragraphs III through VII, inclusive, constitute unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the Act.

Wherefore, the National Labor Relations Board on the 23rd day of April, 1946, issues its Complaint against the Scientific Nutrition Corporation d/b/a Capolino Packing Corporation, the respondent herein.

/s/ JOSEPH E. WATSON,  
Regional Director.

## BOARD'S EXHIBIT 1c

United States of America, Before the National  
Labor Relations Board, Twentieth Region

In the Matter of

SCIENTIFIC NUTRITION CORPORATION,  
d/b/a Capolino Packing Corporation

and

FOOD, TOBACCO, AGRICULTURAL & AL-  
LIED WORKERS UNION OF AMERICA,  
CIO.

and

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMER-  
ICA, AFL

Party to the Contract.

## NOTICE OF HEARING

Please Take Notice that on the 7th day of May, 1946, at 10 o'clock in the forenoon in the Council Chamber of the City Hall, Merced, California, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the Complaint



attached hereto, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

A copy of the Charge upon which the Complaint is based is attached hereto.

You are further notified that you have the right to file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an answer to the said Complaint within ten (10) days from the service thereof.

Please Take Notice that duplicates of all exhibits which are offered in evidence will be required unless, pursuant to request or motion, the Trial Examiner in the exercise of his discretion and for good cause shown, directs that a given exhibit need not be duplicated.

In Witness Whereof the National Labor Relations Board has caused this, its Complaint and Notice of Hearing, to be signed by the Regional Director for the Twentieth Region on this 23rd day of April, 1946.

[Seal]      /s/ JOSEPH E. WATSON,  
Regional Director, National  
Labor Relations Board.

## BOARD'S EXHIBIT 1d

United States of America, Before the National  
Labor Relations Board, Twentieth Region

Case No. 20-C-1422

In the Matter of

SCIENTIFIC NUTRITION CORPORATION,  
d/b/a Capolino Packing Corporation

and

FOOD, TOBACCO, AGRICULTURAL & AL-  
LIED WORKERS UNION OF AMERICA,  
CIO.

and

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMER-  
ICA, AFL

Party to the Contract.

AFFIDAVIT OF SERVICE OF COMPLAINT  
AND NOTICE OF HEARING

Date of Mailing, April 23, 1946

I, the undersigned employee of the National La-  
bor Relations Board, being duly sworn, depose and  
say that on the date indicated above I served the  
above-entitled documents by postpaid registered

mail upon the following persons, addressed to them at the following addresses:

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, A. F. of L., 846 South Union, Los Angeles, California. Att'n: Mr. Einar Mohn. Registry No. 915450, Date of delivery: 4/23/46.

California State Council of Cannery Unions, A. F. of L., 1916 Broadway, Oakland 12, California. Registry No. 915451. Date of delivery: 4/24/46.

Scientific Nutrition Corporation, d/b/a Capolino Packing Corporation, Atwater, California. Registry No. 915452. Date of delivery: 4/24/46.

Food, Tobacco, Agricultural & Allied Workers Union of America, CIO, 150 Golden Gate Avenue, San Francisco, California. Registry No. 915453. Date of delivery: 4/24/46.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL c/o Mr. Mathew O. Tobriner, 1035 Russ Building, San Francisco 4, California. Registry No. 915454. Date of delivery: 4/24/46.

/s/ CECILIA McMANMON,

Subscribed and sworn to before me this 7th day of May, 1946.

[Seal] /s/ ROSE C. CHAFFEE,

Designated Agent, National Labor Relations Board,  
20th Region.

[Return Receipts, Registered Mail, as indicated above, attached.]

## BOARD'S EXHIBIT 1c

United States of America Before the National  
Labor Relations Board, Twentieth Region

Case No. 20-C-1422

In the Matter of

SCIENTIFIC NUTRITION CORPORATION,  
d/b/a CAPOLINA PACKING CORPORA-  
TION,

and

FOOD, TOBACCO, AGRICULTURAL & AL-  
LIED WORKERS UNION OF AMERICA,  
CIO,

and

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMER-  
ICA, AFL,

Party to the Contract.

## NOTICE OF POSTPONEMENT OF HEARING

Please Take Notice that the hearing in the above-entitled matter, heretofore set for the 7th day of May, 1946, has been postponed and will be conducted on May 14, 1946, at 10 o'clock in the forenoon in the Council Chamber of the City Hall, Merced, California.

Dated at San Francisco, California, this 27th day of April, 1946.

[Seal] /s/ JOSEPH E. WATSON,

Regional Director, National Labor Relations Board,  
Twentieth Region.

BOARD'S EXHIBIT 1f

United States of America Before the National  
Labor Relations Board, Twentieth Region

Case No. 20-C-1422

In the Matter of

SCIENTIFIC NUTRITION CORPORATION,  
d/b/a CAPOLINA PACKING CORPORATION,

and

FOOD, TOBACCO, AGRICULTURAL & ALLIED  
WORKERS UNION OF AMERICA,  
CIO,

and

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN  
AND HELPERS OF AMERICA, AFL,

Party to the Contract.

AFFIDAVIT OF SERVICE OF NOTICE OF  
POSTPONEMENT OF HEARING

Date of Mailing, April 27, 1946.

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-

entitled documents by postpaid registered mail upon the following persons, addressed to them at the following addresses:

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, 846 South Union, Los Angeles, California. Att'n.: Mr. Einar Mohn. Registry No. 915481. Date of delivery: 4-29-46.

California State Council of Cannery Unions, AFL, 1916 Broadway, Oakland 12, California. Registry No. 915480. Date of delivery: 4-29-46.

Scientific Nutrition Corporation, d/b/a Capolino Packing Corporation, Atwater, California. Registry No. 915479. Date of delivery: 4-29-46.

Food, Tobacco, Agricultural & Allied Workers Union of America, CIO, 150 Golden Gate Avenue, San Francisco, California. Registry No. 915483. Date of delivery: 4-29-46.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, c/o Mr. Mathew O. Tobriner, 1035 Russ Building, San Francisco 4, California. Registry No. 915483. Date of delivery: 4-29-46.

/s/ BERNICE E. OLSON.

Subscribed and sworn to before me this 7th day of May, 1946.

[Seal] /s/ ROSE C. CHAFFEE,  
Designated Agent, National Labor Relations Board,  
20th Region.

[Return Receipts, Registered Mail attached.]

BOARD'S EXHIBIT No. 1g

United States of America Before the National  
Labor Relations Board, Twentieth Region

Case No. 20-C-1422

In the Matter of

SCIENTIFIC NUTRITION CORPORATION,  
d/b/a CAPOLINO PACKING CORPORATION,

and

FOOD, TOBACCO, AGRICULTURAL & AL-  
LIED WORKERS UNION OF AMERICA,  
CIO,

and

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMER-  
ICA, AFL,

Party to the Contract.

ANSWER OF SCIENTIFIC NUTRITION  
CORPORATION, d/b/a CAPOLINO PACK-  
ING CORPORATION

Comes now the above-named Scientific Nutrition Corporation, d/b/a Capolino Packing Corporation and answering the complaint on file in the above-entitled matter, admits, denies and alleges as follows:

I.

Admits the allegations of paragraphs I, II and VI of said complaint.

## II.

Answering paragraph III of said complaint, denies each and every allegation therein contained and in this respect alleges that on May 18, 1945, this answering respondent entered into a written agreement, a copy of which it attached hereto and marked "Exhibit A"; further answering said paragraph III, this answering respondent alleges that for a period of time prior to March 1, 1946, it collected union dues from some of its employees.

## III.

Denies generally and specifically each and every remaining allegations and conclusions set forth and contained in said complaint not otherwise hereinabove specifically answered.

Wherefore respondent prays that the complaint herein be dismissed and that all proceedings pursuant thereto be terminated.

SCIENTIFIC NUTRITION CORPORATION,  
d/b/a CAPOLINO PACKING CORPORATION,

By /s/ JAMES R. AGEE,  
Its Attorney.

## EXHIBIT A

## AGREEMENT

This Agreement made and entered into this 18 day of May, 1945, by and between the Scientific Nutrition Corporation, of Atwater, California, hereinafter designated as the Employer, and The Inter-



National Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union of America, Affiliated With the American Federation of Labor, hereinafter designated as the Union, to become effective 5-18-1945.

Witnesseth: That in consideration of the premises it is mutually agreed as follows:

Section 1. That the Employer hereby agrees to recognize the Union as the sole collective bargaining agent for all the employees of the Employer covered by the master agreement between the California Processors and Growers, Inc., and the American Federation of Labor and the California State Council of Cannery Unions.

Section 2. The Employer agrees to place into effect any amendments to said master agreement which now are pending before the War Labor Board upon the War Labor Board approval.

In Witness Whereof, the parties hereto have set their hands and seals this 18 day of May, 1945.

Employer  
SCIENTIFIC NUTRITION CORP.

By J. CAPOLINO.

Union  
THE INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS UNION OF  
AMERICA,

By H. L. WOXBERG,

International Representative.

## BOARD'S EXHIBIT No. 1h

United States of America Before the National Labor  
Relations Board, Twentieth Region

Case No. 20-C-1422

In the Matter of

SCIENTIFIC NUTRITION CORPORATION,  
d/b/a CAPOLINO PACKING CORPORATION,  
and

FOOD. TOBACCO, AGRICULTURAL & AL-  
LIED WORKERS UNION OF AMERICA,  
CIO, and

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMER-  
ICA, AFL, Party to the Contract.

## ANSWER

Now comes International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, hereinafter referred to as AFL, and by way of answer to the Complaint on file herein, alleges as follows:

## I.

Answering Paragraphs I, II and VI of said Complaint, admits the allegations thereof.

## II.

Answering paragraph III of said Complaint, AFL admits that on or about May 18, 1945, respondent entered into a contract with AFL, as alleged in said Complaint, and that respondent has thereafter

enforced and given effect to said contract, but AFL denies each and all of the other allegations of said paragraph.

### III.

Answering paragraphs IV, V, VII, both paragraphs numbered VIII and paragraph XI, AFL denies each and every allegation of each and every of said paragraphs.

Wherefore, AFL prays that the Complaint be dismissed.

TOBRINER & LAZARUS,  
By /s/ MATHEW O. TOBRINER,  
Attorneys for AFL.

State of California,  
City and County of San Francisco—ss.

Einar O. Mohn, being first duly sworn, deposes and says:

That he is the International Representative of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and as such makes this verification on its behalf; that he has read the foregoing Answer and knows the contents thereof; that the same is true of his own knowledge except as to those matters which are therein stated on information or belief, and as to those matters that he believes it to be true.

/s/ EINAR O. MOHN.

Subscribed and sworn to before me this 13th day of May, 1946.

[Seal] /s/ ALFRED I. MARTIN,  
Notary Public in and for the City and County of  
San Francisco, State of California.

## BOARD'S EXHIBIT No. 1i

United States of America Before the National Labor  
Relations Board, Twentieth Region

Case No. 20-C-1422

In the Matter of

SCIENTIFIC NUTRITION CORPORATION,  
d/b/a CAPOLINO PACKING CORPORA-  
TION,

and

FOOD, TOBACCO, AGRICULTURAL & AL-  
LIED WORKERS UNION OF AMERICA,  
CIO,

and

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMER-  
ICA, AFL,

Party to the Contract.

## MOTION TO DISMISS

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, hereinafter referred to as AFL, party to the contract herein, hereby appears specially herein for the purpose of this motion and not otherwise,

and hereby makes and files this Motion to Dismiss upon the following grounds:

I.

The National Labor Relations Board, on or about February 15, 1946, having already "provided" that the respondent company is without right to bargain and contract with the AFL, has, by such pronouncement prejudged the present case before trial and is therefore not the proper tribunal before which the matters presented by the Complaint herein should be tried. Such "ruling" was made without any prior notice to the parties that the Board would make any determination of the right of the parties to engage in exclusive collective bargaining. No hearing was held upon said subject matter. No evidence was taken on such subject matter. No charges were filed or complaint issued on such subject matter. The Board attempted to determine such right *ex cathedra* and *ex parte*, in violation of the provisions of the National Labor Relations Act. By said unlawful acts the Board has prejudged the instant matter, rendered itself unable to decide said matter impartially, and this Complaint should therefore be dismissed.

As and for a Second and Separate and Independent Ground for Said Motion to Dismiss, Said AFL Alleges:

I.

In the event that the Supplemental Decision of February 15, 1946, did not "order" said AFL not to bargain exclusively with respondent, or in the event that the National Labor Relations Board lacked jurisdiction to provide in said Supplemental

Decision that said AFL should not bargain exclusively with said company, the within Complaint should be dismissed on the ground that it does not state a cause of action. Unless and until a new bargaining agency is chosen, respondent company is not only permitted but obligated to bargain with and recognize the AFL as the existing bargaining representative of its employees.

Wherefore, AFL moves that the within Complaint be dismissed.

TOBRINER & LAZARUS,  
By /s/ MATHEW O. TOBRINER,  
Attorneys for AFL.

United States of America Before the National Labor  
Relations Board

Case No. 20-C-1422

In the Matter of

SCIENTIFIC NUTRITION CORPORATION,  
d/b/a CAPOLINO PACKING CORPORATION,

and

FOOD, TOBACCO, AGRICULTURAL AND ALLIED  
WORKERS UNION OF AMERICA,  
CIO,

and

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN  
AND HELPERS OF AMERICA, AFL,

Party to the Contract.

AFL'S EXCEPTIONS TO INTERMEDIATE  
REPORT

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, hereby excepts to the Intermediate Report of the Trial Examiner in the above-entitled proceeding, as follows:

I.

Findings of Fact Excepted To

“According to Gus Cedar, a boilerman in the respondent's employ,<sup>4</sup> J. Capolino told the employees that the respondent had been notified by the Teamsters that that Union was ‘going to take over the

plant,' and that there was nothing that the employees could do. He said further that if they did not join the Teamsters, that Union would stop deliveries to the plant, causing a cessation of operations and the resultant loss of employment. Cedar then asked J. Capolino to allow the employees sufficient time to contact Local 22382 in Modesto, California, so that they could 'find out what it was all about.'<sup>5</sup>"

"<sup>5</sup> In essential details McIsaac corroborated Cedar's testimony. He did not specifically deny that J. Capolino told the employees that if they did not join the Teamsters, deliveries would stop. He admitted that J. Capolino, after advising the employees of the substance of the May 8, letter from the Teamsters said that he 'was afraid this was going to lead to a lot of trouble and possibly shut the plant down' but then told them he was not interested in their union affiliation so long as there was peace among the employees and the plant could continue to operate. The undersigned credits Cedar's testimony." (Emphasis supplied) (p. 4)

"\* \* \* the respondent not only urged its employees to join the Teamsters and warned them of the possible shutdown of the plant if they did not join, but also granted the Teamsters the use of its time and property for the purpose of soliciting memberships and threatening employees with the loss of their jobs if they refused to become members of the Teamsters." (p. 7)

"\* \* \* By granting such aid and assistance to the Teamsters, the respondent illegally participated in the selection of the bargaining representative of



its employees and is not entitled to rely, as proof of the Teamsters' majority for the purpose of recognition, upon the designation to the completion of which it had illegally contributed." (p. 8)

"Upon the record as a whole the undersigned is convinced and finds that the respondent urged and warned its employees to become members of the Teamsters, and granted the use of its time and property to representatives of the Teamsters for the purpose of addressing and soliciting its employees thereby lending support to the Teamsters and assisting it in obtaining a majority of members among the respondent's employees." (p. 9)

## II.

### Conclusion of Law Excepted To

"3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act." (p. 12)

## III.

### Proposed Remedies Excepted To

That the respondent shall:

"1. Cease and desist from:

(a) Recognizing International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, as the exclusive representative of its employees for the purposes of collective bargaining unless and until said organization shall be certified by the National Labor Relations Board as

the exclusive representative of such employees;”  
(p. 12)

“(c) Withhold all recognition from International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, as the exclusive representative of its employees for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment unless and until said organization shall have been certified by the National Labor Relations Board as the representative of such employees;” (p. 13)

#### IV.

#### Portion of Proposed Notice Excepted To

“We Will Not recognize International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, as the exclusive representative of our employees for the purposes of collective bargaining, unless and until said organization shall be certified by the National Labor Relations Board as the exclusive representative of such employees.

“We Will Not in any manner encourage membership in International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, or any other labor organization, by yielding to pressure from that or any other labor organization or other pressure.” (Appendix A)

Respectfully submitted,

TOBRINER & LAZARUS,

By /s/ MATHEW O. TOBRINER,

Attorneys for AFL.

United States of America Before the National  
Labor Relations Board

Case No. 20-C-1422

In the Matter of

SCIENTIFIC NUTRITION CORPORATION,  
d/b/a CAPOLINO PACKING CORPORATION,

and

FOOD, TOBACCO, AGRICULTURAL AND ALLIED  
WORKERS UNION OF AMERICA,  
CIO,

and

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN  
AND HELPERS OF AMERICA, AFL,

Party to the Contract.

Mr. Robert Tillman, for the Board.

Messrs. James R. Agee and J. Paul St. Sure, of  
Oakland, Calif., for the respondent.

Tobriner and Lazarus, by Mr. Mathew Tobrin-  
ner, of San Francisco, Calif., for the Teamsters.

Mr. Warren C. Horie, of Merced, Calif., and Mr.  
M. Wolf, of New York City, for the CIO.

Mr. Samuel M. Kaynard, of counsel to the Board.

## DECISION AND ORDER

On June 20, 1946, Trial Examiner Sidney Lindner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices and recommending that the respondent cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Teamsters filed exceptions to the Intermediate Report and a supporting brief; the respondent filed no exceptions. On October 1, 1946, the Board at Washington, D. C., heard oral argument, in which the respondent, the Teamsters, and the CIO participated.

The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following exceptions and modifications.

1. The Trial Examiner found, and we agree, that the respondent engaged in conduct violative of Section 8 (1) of the Act. In so agreeing, however, we, unlike the Trial Examiner, do not pass upon the

Teamsters' contention that, by virtue of an award of jurisdiction over the cannery workers by the Executive Council of the American Federation of Labor, the Teamsters became the legal successor to Local 22382, and thereby inherited its then outstanding contract with the respondent and its exclusive representative status. It is our opinion, and we find, that regardless of the status of the Teamsters, either as a successor to the bargaining representative or as a newly chosen representative of the employees, a matter upon which we deem it unnecessary to pass, the respondent's conduct was violative of the Act. As set forth in the Intermediate Report, the respondent warned its employees that they faced a plant shutdown and resultant unemployment unless they joined the Teamsters, and otherwise assisted the Teamsters in recruiting new members. In the absence of a valid existing closed-shop agreement, such encouragement of membership in the Teamsters by the respondent is prohibited by the Act, even though the Teamsters may have then represented a majority of the employees.<sup>1</sup>

We find, as did the Trial Examiner, that neither Local 22382 nor the Teamsters had a closed-shop agreement with the respondent.<sup>2</sup>

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<sup>1</sup>N. L. R. B. v. Electric Vacuum Cleaner Co., 315 U. S. 685, reversing 120 F. 2d 611 (C. C. A. 6), setting aside 18 N. L. R. B. 591; N. L. R. B. v. John Englehorn & Sons, 134 F. 2d 553 (C. C. A. 3), enforcing 42 N. L. R. B. 866.

<sup>2</sup>Matter of G. W. Hume and California Processors & Growers, Inc., 71 N. L. R. B., No. 81.

2. The Trial Examiner found that the discharge of Gus Cedar for refusing to join the Teamsters was violative of Section 8 (3) of the Act. No exceptions were filed to this finding, and we agree with the Trial Examiner insofar as his conclusion is based on his subsidiary finding that the Master Agreement, upon which the respondent relies, was not a closed-shop contract<sup>3</sup> and therefore gave no justification for the discharge of Gus Cedar.

3. The Trial Examiner, having found that "the respondent assisted the Teamsters in obtaining a majority of members among the respondent's employees," and that the contract of May 18, 1945, was therefore illegal, recommended that the respondent be required to refrain from recognizing the Teamsters as the exclusive bargaining representative of its employees unless and until the Teamsters is duly certified as such representative by the Board. Our disposition of the issues herein makes it unnecessary for us to pass upon the validity of the 1945 contract; and, inasmuch as that contract expired on March 1, 1946, and there has since been no collective bargaining between the respondent and the Team-

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<sup>3</sup>The contention that the parties understood and administered the contract as requiring membership in the Teamsters, is not supported by the evidence. See Matter of G. W. Hume and California Processors & Growers, Inc., 71 N. L. R. B., No. 81.

sters, we see no need for including the Trial Examiner's recommendation in our Order.<sup>4</sup>

## ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Scientific Nutrition Corporation, d/b/a Capolino Packing Corporation, Atwater, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Encouraging membership in International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, or any other labor organization of its employees, by discharging and refusing to reinstate any of its employees, or by discriminating in any other manner in regard

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<sup>4</sup>However, it should be noted that in the Bercut-Richards representation proceedings (65 N. L. R. B. 1052, 1057) the Board advised the employers that they "may not, pending a new election, give preferential treatment to any of the labor organizations involved \* \* \*" Moreover, in recent complaint proceedings before the Board, involving similar cannery plants and cannery workers, we have held that the execution of an exclusive bargaining contract, in the face of a pending question concerning representation, constituted a violation of Section 8 (1) of the Act. Matter of Flotill Products, Inc., 70 N. L. R. B., No. 12; Matter of Lincoln Packing Co., 70 N. L. R. B., No. 13. It need only be added that the respondent herein is a party to the representation proceedings still pending before the Board in Matter of Bercut-Richards et al., (64 N. L. R. B. 133, 65 N. L. R. B. 1052).

to their hire or tenure of employment, or any term or condition of their employment.

(b) In any other manner encouraging or coercing its employees to become or remain members of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, or any other labor organization, whether or not because of pressure from that or any other labor organization, or because of other economic considerations.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to Gus Cedar immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to his seniority or other rights and privileges:

(b) Make whole Gus Cedar for any loss of pay he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to the amount that he normally would have earned as wages during the period from June 22, 1945, the date of his discharge, to the date of the respondent's offer of reinstatement, less his net earnings during said period;

(c) Post at its plant at Atwater, California, copies of the notice attached hereto, marked "Appendix A."<sup>5</sup> Copies of said notice, to be furnished by the

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<sup>5</sup>In the event that this order is enforced by a decree of a Circuit Court of Appeals, there shall be inserted before the words "A Decision and Order," the words: "A Decree of the United States Circuit Court of Appeals Enforcing."



Regional Director for the Twentieth Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material:

(d) Notify the Regional Director for the Twentieth Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

Signed at Washington, D. C., this 13th day of December, 1946.

[Seal]

PAUL M. HERZOG,  
Chairman.

JOHN M. HOUSTON.  
Member, National Labor  
Relations Board.

## APPENDIX A

### Notice to All Employees

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not in any manner encourage or coerce our employees to become or remain mem-

bers of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, or any other labor organization, whether or not because of pressure from that or any other labor organization, or because of other economic considerations.

We Will Offer to Gus Cedar immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to any seniority or other rights and privileges enjoyed, and make him whole for any loss of pay suffered as a result of the discrimination.

All our employees are free to become or remain members of any labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

SCIENTIFIC NUTRITION  
CORPORATION,

Employer.

Dated.....

By .....,  
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

United States of America Before the National  
Labor Relations Board, Trial Examining Division,  
Washington, D. C.

Case No. 20-C-1422

In the Matter of

SCIENTIFIC NUTRITION CORPORATION,  
d/b/a CAPOLINO PACKING CORPORATION,

and

FOOD, TOBACCO, AGRICULTURAL AND  
ALLIED WORKERS UNION OF AMERICA, CIO,

and

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN  
AND HELPERS OF AMERICA, AFL,

Party to the Contract.

Mr. Robert E. Tillman, for the Board.

Mr. James R. Agee, of Oakland, Calif., for the  
respondent.

Tobriner and Lazarus, by Mr. Mathew Tobriner,  
of San Francisco, Calif., for the AFL.

Mr. Warren G. Horie, of Merced, Calif., for the  
CIO.

## INTERMEDIATE REPORT

## Statement of the Case

Upon a third amended charge duly filed by the Food, Tobacco, Agricultural and Allied Workers Union of America, CIO, herein called the CIO, the National Labor Relations Board, herein called the Board, by its Regional Director for the Twentieth Region, (San Francisco, California), issued its complaint dated April 23, 1946, against Scientific Nutrition Corporation, d/b/a Capolino Packing Corporation, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3), and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and notice of hearing were duly served upon the respondent, CIO, California State Council of Cannery Unions, AFL, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, herein called the Teamsters, party to the contract.

With respect to the unfair labor practices, the complaint alleged in substance that the respondent: (1) urged, persuaded, threatened, and warned its employees to become members of the Teamsters, granted access to representatives of the Teamsters, assisting it in obtaining a majority of members among the respondent's employees, and entered into a contract with the Teamsters which is alleged to be illegal because of the aforesaid acts; (2) on or

about June 22, 1945, discharged its employee Gus Cedar because he refused to join the Teamsters and has at all times thereafter refused to reinstate him; and (3) because of all the alleged acts set forth above has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act.

Thereafter, the respondent and the Teamsters filed answers denying the commission of any unfair labor practices.

Pursuant to notice, a hearing was held in Merced, California, on May 14, 1946, before the undersigned, Sidney Lindner, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent, the Teamsters were represented by counsel, and the CIO by a lay representative and participated in the hearing. The parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the opening of the hearing counsel for the Teamsters moved to dismiss the complaint in its entirety on the grounds that (1) the Board on or about February 15, 1946, having already "provided" that the respondent is without right to bargain and contract with the AFL, has, by such pronouncement, prejudged the present case, and is therefore not the proper tribunal before which the matters presented by the complaint herein should be tried, and (2) the complaint does not state a cause of action. The motion was denied by the undersigned. At the conclusion of the hearing all

parties engaged in oral argument and were granted leave to file briefs on or before May 24, 1946, with the undersigned. No briefs have been received.

Upon the record in the case and from his observation of the witnesses, the undersigned makes the following:

### Findings of Fact

#### I. The Business of the Respondent

The Scientific Nutrition Corporation is a New York corporation, having its principal office in New York City. It operates plants at Atwater, California, and at Colon, Cuba, where it is engaged in the business of canning and processing fruits and vegetables. At its Atwater, California, plant, the only plant involved in this proceeding, the respondent is engaged in business as the Capolino Packing Corporation. The annual sales of products from the respondent's Atwater plant total approximately \$1,500,000, of which approximately 90 per cent represents the amount of sales of products which are shipped from the plant to points outside the State of California. The respondent admits that it is engaged in commerce within the meaning of the Act.

#### II. The Organizations Involved

Food, Tobacco, Agricultural and Allied Workers Union of America, CIO, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and California State Council of Cannery Unions, AFL, and its constituent unions,

one of which is Local 22382, are labor organizations admitting to membership employees of the respondent.

### III. The Unfair Labor Practices

#### A. Events Leading Up to the Contract With the Teamsters

In 1941, Cannery Workers Union Local 22382, a Federal Local Union of the American Federation of Labor, herein referred to as Local 22382, entered into a collective bargaining contract with the Capolino Packing Corporation herein referred to as Capolino. By the terms of this contract the parties thereto adopted and agreed to be bound by the Master Agreement<sup>1</sup> previously executed by and between California Processors and Growers, Inc., herein referred to as the Association, and the American Federation of Labor, and California State Council of Cannery Unions, although Capolino was not a member of the Association. Subsequent to 1941, the parties did not enter into any new written contracts, but continued to maintain the same contractual status agreed upon in 1941.

Shortly after January 1, 1945, J. Capolino, the then manager of the Capolino plant, notified Local 22382, by letter, that Scientific Nutrition Corporation, herein referred to as the respondent, had taken over full control and ownership of the plant<sup>2</sup>

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<sup>1</sup>Also referred to in the record as the C. P. & G. contract and the "green book agreement."

<sup>2</sup>Capolino Packing Corporation was sold to Scientific Nutrition Corporation whose main office is in New York City, in the early part of 1944.

and that collective bargaining contracts in the future would have to be signed by an official of the New York office, until such time as J. Capolino was authorized to do so himself. The respondent continued to recognize Local 22382 as the exclusive bargaining representative of its employees under the same terms and conditions as theretofore.

On or about May 8, 1945, the respondent received a written communication from the Teamsters as follows:

Scientific Nutrition Corporation  
Atwater, California

Attention Mr. Joseph Capolino

Gentlemen:

The following is the action of the Executive Council of the American Federation of Labor in a meeting held in Washington, D. C., on May 3rd, 1945.

“The following is the award of the Executive Council—it is the sense of this Council meeting that the interests of the American Federation of Labor would be protected and preserved in the canning industry in California, Washington, and Oregon by the transfer of the federal labor unions in that field to the Teamsters International Union and that the officers of the Federation be directed to cooperate with the Teamsters International Union in bringing about this result, and that the AFL cooperate in helping to organize the unorganized in this field.”



By the above action the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union of America inherit the agreement now in effect between your company and the American Federation of Labor and the Local Cannery Workers Union.

The International Brotherhood of Teamsters wish to advise you that we expect your company to immediately recognize only the Teamsters International Union as the representatives of your employees and in return the Teamsters International Union will live up to the agreement now in effect to the letter.

Would appreciate an answer by return mail, your position in this matter.

Yours truly,

/s/ H. L. WOXBURG.

International Representative.

By letter dated May 11, 1945, which the respondent admitted receiving, the Cannery and Food Process Workers' Council of the Pacific Coast, advised the respondent that the transfer of Local 22382 membership to the Teamsters by the Executive Council of the American Federation of Labor was made without regard to the wishes of the members. That as a result, the employees terminated their membership in Local 22382 and organized under the name of Cannery Food Process Workers Union of Modesto Area and had received a charter from the Cannery and Food Process Workers' Council of the

Pacific Coast. Further, that the Cannery and Food Process Workers Union of Modesto Area represented all of the respondent's employees except supervisors in collective bargaining matters and indicated a willingness to meet with the respondent. This letter was apparently never answered by the respondent.

On the Monday following the receipt of the above letters, the employees were assembled in the warehouse of the plant during working hours, where they were addressed by J. Capolino.<sup>3</sup> Present also were Eugene McIsaac, plant superintendent, and in charge of labor relations, Stewart, assistant plant superintendent; Spafford, foreman of the warehouse, and White, assistant manager.

According to Gus Cedar, a boilerman in the respondent's employ,<sup>4</sup> J. Capolino told the employees that the respondent had been notified by the Teamsters that the Union was "going to take over the plant," and that there was nothing that the employees could do. He said further that if they did not join the Teamsters, that Union would stop deliveries to the plant, causing a cessation of operations and the resultant loss of employment. Cedar then asked J. Capolino to allow the employees sufficient

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<sup>3</sup>The record reveals that the plant was not engaged in canning at this time and only the regular employees, of whom there were 26, attended the meeting.

<sup>4</sup>The discharge of Cedar will be discussed hereinafter.

time to contact Local 22382 in Modesto, California, so that they could "find out what it was all about."<sup>5</sup>

About 2 hours after the above-described meeting,<sup>6</sup> a group of five representatives of the Teamsters which included King, Torreano, Brown, and two unidentified men, called at the plant office and asked J. Capolino and McIsaac what their intentions were with respect to the May 8 letter. They were informed that until such time as the employees designated the Teamsters to represent them, the respondent did not intend to do anything; that the choice of a union remained with the employees. The Teamsters' representatives then requested the respondent's permission to talk to the employees, which was granted.

McIsaac instructed the employees to gather again in the warehouse. When they were all assembled, McIsaac informed them that the representatives of the Teamsters wanted to talk to them. King introduced himself,<sup>7</sup> and told the employees that he was

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<sup>5</sup>In essential details McIsaac corroborated Cedar's testimony. He did not specifically deny that J. Capolino told the employees that if they did not join the Teamsters, deliveries would stop. He admitted that J. Capolino, after advising the employees of the substance of the May 8 letter from the Teamsters, said that he "was afraid this was going to lead to a lot of trouble and possibly shut the plant down," but then told them he was not interested in their union affiliation so long as there was peace among the employees and the plant could continue to operate. The undersigned credits Cedar's testimony.

<sup>6</sup>The first meeting took place at 8:30 a.m.

<sup>7</sup>King was known to the employees as he formerly had been an official of Local 22382.

now working for the Teamsters, and stated his reasons for changing his affiliation to that Union. He also outlined the benefits the employees would gain by affiliation with the Teamsters. According to the undenied testimony of Cedar which the undersigned credits, King then asked the employees when they were going to sign up with the Teamsters. Torreano also spoke along similar lines. McIsaac was present while King and Torreano spoke to the employees. After the meeting and while the employees were still in the warehouse, the Teamsters representatives went among the employees and solicited each one individually. That same afternoon the Teamsters presented signed membership applications of 13 of the employees to the respondent and demanded that a contract be signed. The respondent refused to sign stating that the Teamsters did not show a majority. About 2 or 3 days later the Teamsters returned to the plant with 3 or 4 additional signed membership applications. The respondent checked all the signatures to determine their validity and on May 18, signed the following contract with the Teamsters:

#### Agreement

This Agreement made and entered into this 18 day of May, 1945, by and between the Scientific Nutrition Corporation, of Atwater, California, hereinafter designated as the Employer and The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union of America,

Affiliated with The American Federation of Labor, hereinafter designated as the Union, to become effective 5/18/1945.

Witnesseth: That in consideration of the premises it is mutually agreed as follows:

Section 1. That the Employer hereby agrees to recognize the Union as the sole collective bargaining agent for all the employees of the Employer covered by the master agreement between the California Processors and Growers, Inc., and the American Federation of Labor and the California State Council of Cannery Unions.

Section 2. The Employer agrees to place into effect any amendments to said master agreement which now are pending before the War Labor Board upon the War Labor Board approval.

In Witness Whereof, the parties hereto have set their hands and seals of this 18 day of May, 1945.

THE INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS UNION OF  
AMERICA,

By H. L. WOXBERG,

International Representative,  
Union.

SCIENTIFIC NUTRITION CORP.,

By J. CAPOLINO,

Employer.

After it had signed the above contract, the re-

spondent called another meeting of its employees in the plant during working hours. McIsaac notified them that a majority had signed membership applications in the Teamsters; that the respondent had signed a contract with the Teamsters, and that henceforth it would be bound by such contract. McIsaac, according to Cedar's undenied testimony which the undersigned credits, also told the employees that "it was too late now to do anything about it."

McIsaac admitted that the respondent never showed the employees a copy of the contract it had signed with the Teamsters, nor did it post the same or any notice to that effect. However, shortly after the contract was signed, King, Torreano, and Brown were again granted permission by the respondent to talk to the employees during a rest period, and at this time according to McIsaac the employees were shown the signed contract by the Teamsters' representatives. It was on this occasion, according to Cedar's undenied testimony which the undersigned credits, that King remarked that a few of the employees had not yet signed up with the Teamsters and warned, "If you boys don't sign up, you will be all sitting out in the park because this plant is going to be closed."

B. The discriminatory discharge of Gus Cedar

On June 22, 1945, the respondent discharged Gus Cedar under the following circumstances:

In June 1944, Cedar was hired by the respondent

and given "regular" employment as a boiler room operator. Cedar was a member of Local 22382 since November 1940 and continued his membership in good standing in that union during his entire period of employment with the respondent.

Cedar testified that the membership of Local 22382 never discussed affiliation with the Teamsters, and that he first learned of the award of jurisdiction of the cannery workers to the Teamsters at the meeting of the respondent's employees called by J. Capolino on or about May 14, 1945, described above.

As found heretofore the Teamsters representatives were granted permission by the respondent to solicit its employees in the plant during working hours. Cedar's uncontradicted testimony is that he was solicited to join the Teamsters by King and Torreano when they were in the plant the first time. On the second occasion when the Teamsters solicited the respondent's employees, Torreano wanted to know what Cedar was going to do about joining the Teamsters, Cedar replied, "not anything about it right now," and Torreano said, "Well, either sign up or else. You know, out you go."

About the latter part of May, 1945, while Cedar was in McIsaac's office, the latter asked him whether he had made up his mind about joining the Teamsters. When Cedar replied that he had not, McIsaac

said that the Teamsters were making demands on the respondent to fire Cedar, and that he was causing the respondent to let him go.

During the second week of June, 1945, according to Cedar's testimony, J. Capolino talked to him about a leaflet that had been distributed in the plant by another union.<sup>8</sup> Cedar was accused by J. Capolino, according to the former, of participating in the distribution of the leaflets and was told that if he wanted to work for the respondent he would have to join the Teamsters.<sup>9</sup>

On June 22, 1945, according to Cedar's undenied testimony which the undersigned credits, while he was working in the boiler room, Torreano and another Teamsters representative in the presence of McIsaac, asked Cedar what his intentions were with respect to joining the Teamsters. Cedar replied that he was not going to become a member of the Teamsters, whereupon Torreano told him that he was fired and to report to the office for his time. McIsaac

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<sup>8</sup>The record reveals that Local 22382 met in June 1945, and made efforts to affiliate with the Seafarers International Union without success. It was this union that purportedly distributed the leaflets.

<sup>9</sup>J. Capolino died in November 1945. Cedar's testimony regarding this incident with J. Capolino was received in evidence over the objections of counsel for the respondent and the Teamsters but has not been used by the undersigned for the purpose of basing a finding thereon.



told Cedar he would have to get another man.<sup>10</sup> Cedar reported at the office at about 12 noon where he was given a termination notice which set forth the reason for discharge as "Refusal to join Union (AF of L) Teamsters." Cedar has not worked for the respondent since that time.

### C. Concluding Findings

#### 1. With respect to the contract with the Teamsters

Counsel for the respondent and for the Teamsters argue that the respondent was required as a matter

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<sup>10</sup>McIsaac did not deny Cedar's testimony. He testified that he discharged Cedar in accordance with the written demand of the Teamsters as follows:

Cannery Warehousemen, Food Processors, Drivers and Helpers, Local 748, 602 Tenth Street, Modesto, California.

June 22, 1945.

Scientific Nutrition Corporation,  
Atwater, California

Attention: Mr. McIsaac

Dear Sir:

In accordance with the terms of the agreement between your company and Local 748 this letter will serve as a notice to your company to terminate the employment of Gus Sedar. (sic)

This man has refused to become a member of this union and under the terms of our contract he is subject to dismissal. We have given Gus Sedar (sic) (30) days in which to make up his mind about joining this Local, which is (20) days more than the time stipulated in the contract. Therefore we ask his immediate dismissal upon receipt of this letter.

Very truly yours.

[Seal]      /s/ H. C. TORREANO,  
Representative.

HCT:BG

of law to deal with the Teamsters as the exclusive bargaining representative of its employees since the Teamsters had proved that it represented a majority of the employees. As found heretofore, the respondent not only urged its employees to join the Teamsters and warned them of the possible shut down of the plant if they did not join, but also granted the Teamsters the use of its time and property for the purpose of soliciting memberships and threatening employees with the loss of their jobs if they refused to become members of the Teamsters. While it may well be that the respondent was motivated in its actions by the fear of economic hardship, nevertheless, it is well established that "the Act prohibits unfair labor practices in all cases. It permits no immunity because the employer may think that the exigencies of the moment require infraction of the statute. In fact nothing in the statute permits or justifies its violation by the employer."<sup>11</sup> By granting such aid and assistance to the Teamsters, the respondent illegally participated in the selection of the bargaining representative of its employees and is not entitled to rely, as proof of the Teamsters' majority for the purpose of recognition, upon the designation to the completion of which it had illegally contributed. Furthermore, even if it is assumed arguendo, that the respondent's illegal conduct did not influence a majority of its employees

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<sup>11</sup>N. L. R. B. v. Star Publishing Co., 97 F. (2d) 465 (C. C. A. 9), enforcing 4 N.L.R.B. 498.

in casting their lot with the Teamsters, an employer may not, in the absence of a valid existing contract requiring membership in a labor organization as a condition of employment, cooperate with a labor organization, though it represents an uncoerced majority of the employees, to secure for its new members.<sup>12</sup>

Counsel for the respondent and for the Teamsters also raised the contention in oral argument that as a result of the award of jurisdiction of the cannery workers to the Teamsters by the American Federation of Labor, the Teamsters succeeded to the position that Local 22382 had formerly occupied insofar as the respondent was concerned. It appears clear from the record that in May, 1945, when the respondent was notified of the award of jurisdiction over its employees to the Teamsters, it refused to subscribe to the "successorship theory" but rather insisted that the Teamsters prove that it represented a majority of the employees before it would enter into a contract and grant recognition to the Teamsters as exclusive bargaining representative of its employees. The respondent no doubt was motivated by the factual situation then confronting it for it had already received notice that the Cannery and Food Process Workers Council of the Pacific Coast claimed to represent a majority of its em-

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<sup>12</sup>N. L. R. B. v. John Englehorn & Sons, 134 F. (2d) 533 (C. C. A. 3) enf'g 42 N.L.R.B. 886; see also N.L.R.B. v. Electric Vacuum Cleaner Co., 315 U. S. 685 reversing 120 F. (2d) 611 (C. C. A. 6) setting aside 18 N.L.R.B. 591.

ployees made up of former members of Local 22382, who were opposed to affiliating with the Teamsters.

The Teamsters too recognized the validity of the respondent's claim that it was not entitled to inherit Local 22382's contract without proof of a majority showing, for it attempted to obtain the allegiance of a majority of the employees. This is borne out by the new agreement of May 18, 1945, made by and between the Teamsters and the respondent, evidently superseding the old contract with Local 22382.<sup>13</sup> It thus appears that both the Teamsters and the respondent abandoned the "successorship theory" and relied on the majority theory as a condition precedent to the making of a new contract. However, even if it be argued that the May 18, 1945, contract was merely a substitution of the name of the Teamsters for that of Local 22382 on the "successorship theory," such a contract, under the facts here presented, would not be valid unless the Teamsters represented an uncoerced majority at the time. While the undersigned does not mean to suggest that a mere change in name or affiliation of a union deprives it of its status as exclusive bargaining representative, nevertheless, the facts herein disclose sufficient doubt, recognized by the parties themselves, that the succeeding union had retained the old union's status as the representative of the majority of the employees in the appropriate unit. The

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<sup>13</sup>Local 22382 was composed of employees of various canneries located in the same geographic area as the respondent.

choice of a collective bargaining representative under the Act is inherent in the employees and neither the employees nor the Board are necessarily bound by an award of a labor organization.<sup>14</sup> Furthermore, the record is clear that at least some of the employees, if not a majority,<sup>15</sup> did not desire the Teamsters to represent them as collective bargaining agent. The undersigned finds this contention without merit.

Counsel for the Teamsters raised the further contention that when the Board in its original Decision in the Matter of Bercut-Richards Packing Company et al,<sup>16</sup> said “. . . Upon the facts in the present record, we shall assume the validity of the extended agreement hereinabove referred to . . .”, it recognized the validity of the May, 1945, contract between the respondent and the Teamsters. Further, that the Board again recognize the validity of this very contract which is now the subject of attack when in its Supplemental Decision in the Matter of Bercut-Richards Packing Company et al,<sup>17</sup> it said “. . . In this state of the record, no legal effect may be given the closed-shop provision contained in the current collective agreements after their expiration

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<sup>14</sup>See Matter of Albert Love Enterprises, doing business as Foote & Davies, 66 N. L. R. B. 416; Matter of Fuld and Hatch Knitting Co., 67 N. L. R. B. No. 133.

<sup>15</sup>As found above, the assistance of the respondent resulted in the Teamsters obtaining a majority.

<sup>16</sup>64 N. L. R. B. 133, issued October 12, 1945.

<sup>17</sup>65 N. L. R. B. 1052 issued February 15, 1946.

date; . . .” The language of the Board carries no such import. The Board in the Matter of Bercut-Richards Company et al, was not confronted with the problem of determining the validity of the contract between the respondent and the Teamsters, as it is here. It is the Board’s general practice in representation cases to presume the regularity and legality of a collective bargaining contract and to refuse to admit evidence in such hearings on the question of whether or not a majority of employees covered by such a contract had actually designated the contracting union as their representative at the time the contract was made.<sup>18</sup> The contention is without merit.

Upon the record as a whole the undersigned is convinced and finds that the respondent urged and warned its employees to become members of the Teamsters, and granted the use of its time and property to representatives of the Teamsters for the purpose of addressing and soliciting its employees thereby lending support to the Teamsters and assisting it in obtaining a majority of members among the respondent’s employees.

The undersigned further finds that the contract of May 18, 1945, was entered into under circumstances prohibited by the Act and that thereby the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

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<sup>18</sup>See Matter of the Lamson Brothers Company, 59 N. L. R. B. 1561; Matter of United States Rubber Company, 62 N. L. R. B. 795.

## 2. With respect to the discharge of Gus Cedar

The complaint alleges that the respondent discharged its employee, Gus Cedar on June 22, 1945, and thereafter refused to reinstate him, because the said employee refused to join the Teamsters.

While admitting these facts, the respondent maintains that it discharged Cedar at the request of the Teamsters, in conformance with a valid closed-shop contract.

Assuming, without conceding, that the contract between the respondent and the Teamsters contained a closed-shop provision, nevertheless, the proviso to Section 8 (3) of the Act permits discharge of an employee pursuant to the terms of a closed-shop contract only where the contract was made with a labor organization which was not established, maintained, or assisted by any unfair labor practice and which was the representative of a majority of the employees in an appropriate unit covered by the contract when made. As found in the prior section of this report, the respondent assisted the Teamsters in obtaining a majority of members among the respondent's employees, and entered into the May 18, 1945, contract under circumstances prohibited by the Act. Therefore, the respondent's contract with the Teamsters did not meet the conditions of the proviso, and in discharging Cedar, the proviso afforded no protection to the respondent.

Even assuming *arguendo* the validity of its contract with the Teamsters, since this contract incorporated the Master Agreement by reference, it is

necessary to look to the Master Agreement to determine if by its terms it is a closed-shop contract in order to sustain the respondent's defense in its discharge of Cedar.

As noted heretofore, Cedar was a "regular" employee who maintained his membership in good standing in Local 22382 during his entire period of employment with the respondent. The Master Agreement clearly exempts employees on the seniority list<sup>19</sup> from being required to obtain clearance slips as a condition for going to work from season to season and is silent as to the "regular" or year round employees. The most it does with reference to the employees on the seniority list is to require the employer to report to the local union, from time to time, the names of those in its employ who did not produce clearance slips on their resumption of work. This part of the agreement contains no language that can be construed to mean that any employee on the seniority list may not be put to work without a union clearance or that he must be a member in good standing or a member at all, to qualify for employment. Nor is there any provision in the Master Agreement that requires an employee who has joined a local union to maintain his membership in good standing as a condition of employment. The sole requirement that the Master Agree-

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<sup>19</sup>The seniority list included "regular" and seasonal employee, i. e., those other than regular employees who worked in a given plant at least 60 per cent of the total number of operating days of said plant during the previous season.



ment imposes upon the employer in this respect is to see that "new employees," as distinguished from employees on the seniority list, file applications for membership in the appropriate local union when they go to work and to notify the new employees that, under the Master Agreement, they must complete their application with the local union within 10 days. The employer's responsibility for the new employees' affiliation ends upon the making of such applications by them and the giving of such notices. The local union expressly assumes, under the terms of the Master Agreement, full responsibility for the new employees's affiliation with it from that point forward. The Master Agreement is likewise silent as to the obligations of the new employee to the local union after his application has been made at the time of his employment, except that within 10 days thereafter he must become a member. It imposes no other obligations with respect to the employee's tenure of employment. At best, the Master Agreement in the opinion of the undersigned, is no more than a preferential hiring contract.

The undersigned finds that the respondent by discharging Cedar, discriminated in regard to his hire and tenure of employment, thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

#### IV. The Affect of the Unfair Labor Practices Upon Commerce

The activities of the respondent set forth in Section III above, occurring in connection with the

operations of the respondent, described in Section I above, have a close, intimate, and substantial relation to trade, traffic and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

### V. The Remedy

Having found that the respondent has engaged in unfair labor practices, the undersigned will recommend that it cease and desist therefrom and take the following affirmative action which it is found will effectuate the policies of the Act.

It has been found that the respondent assisted the Teamsters in obtaining a majority of members among the respondent's employees and thereafter on May 18, 1945, entered into a contract recognizing the Teamsters as exclusive bargaining representative of its employees, which contract is illegal because of the aforesaid assistance. Since the said contract expired by its terms on March 1, 1946, no recommendation that the respondent be ordered to cease and desist from giving effect to said contract is necessary. However, in order to prevent recognition of the Teamsters by the respondent either by oral agreement or otherwise, the undersigned will recommend that the respondent be ordered not to recognize the Teamsters as the exclusive bargaining representative of its employees unless and until said organization shall be duly certified by the Board as exclusive bargaining representative of its employees. Nothing herein, however, should be construed as re-

quiring the respondent to vary any wage, hour, seniority or other substantive features of its relations with the employees themselves, which the respondent has established in the performance of this contract, or to prejudice the assertion by the employees of any rights they may have under such agreement.

It has also been found that the respondent discriminated in regard to the hire and tenure of employment of Gus Cedar a "regular" employee. The undersigned will recommend that the respondent offer him immediate and full reinstatement to his former or substantial equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay he may have suffered by reason of such discrimination, by payment to him of a sum of money equal to the amount he normally would have earned as wages during the period from June 22, 1945, the date of his discharge, to the date of the respondent's offer of reinstatement to him, less his net earnings<sup>20</sup>

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<sup>20</sup>By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company*, 8 N. L. R. B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N. L. R. B.*, 311 U. S. 7.

during said period. Normally in cases in which an employer has unlawfully discriminated against an employee by discharging him, in addition to affirmative relief, the Board orders the employer to cease and desist from in any manner infringing upon the rights guaranteed in Section 7 of the Act. In the instant case, however, the respondent discharged Cedar not to satisfy any purpose of its own but, rather, yielded to the pressure of the Teamsters. Under such circumstances, and in view of the absence of any evidence that danger of other unfair labor practices is to be anticipated from the respondent's conduct in the past, the undersigned will not recommend that the respondent be enjoined from the commission of any and all unfair labor practices. Nevertheless, the undersigned will recommend that the respondent be ordered to cease and desist from the unfair labor practices found herein.<sup>21</sup>

On the basis of the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following:

### Conclusions of Law

1. Food, Tobacco, Agricultural and Allied Workers Union of America, CIO, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, California State Council of Cannery Workers, AFL, and Cannery Workers Union, Local 22382, are labor organizations within the meaning of Section 2 (5) of the Act.

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<sup>21</sup>See Matter of American Car and Foundry Company, 66 N. L. R. B. No. 129.

2. By discriminating in regard to the hire and tenure of employment of Gus Cedar, thereby encouraging membership in the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2 (6) and (7) of the Act.

### Recommendations

Upon the basis of the above findings of fact and conclusions of law, the undersigned recommends that the respondent Scientific Nutrition Corporation, d/b/a Capolino Packing Corporation, Atwater, California, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Recognizing International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, as the exclusive representative of its employees for the purpose of collective bargaining unless and until said organization shall be certified by the National Labor Relations Board as the exclusive representative of such employees;

(b) Encouraging membership in International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, or any other labor organization, by discharging and refusing to reinstate any of its employees or in any other manner discriminating in regard to their hire and tenure of employment or any terms or conditions of employment;

(c) In any manner encouraging membership in International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, or any other labor organization, by yielding to pressure from that organization, or other pressure.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Offer to Gus Cedar immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges;

(b) Make whole the said Gus Cedar in the manner set forth in the Section entitled "The remedy for any loss of pay he may have suffered by reason of the respondent's discrimination against him;

(c) Withhold all recognition from International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, as the exclusive representative of its employees

for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment unless and until said organization shall have been certified by the National Labor Relations Board as the representative of such employees;

(d) Post at its Atwater, California, plant copies of the notice attached hereto and marked Appendix A. Copies of the notice to be furnished by the Regional Director for the Twentieth Region, after being duly signed by the respondent's representative, shall be posted by the respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced or covered by any other material;

(e) File with the Regional Director for the Twentieth Region, on or before ten (10) days from the date of the receipt of this Intermediate Report, a report in writing setting forth in detail the manner and form in which the respondent has complied with the foregoing recommendations.

It is further recommended that unless the respondent notifies said Regional Director in writing within ten (10) days from the receipt of this Intermediate Report that it will comply with the

foregoing recommendations, the National Labor Relations Board issue an order requiring it to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, as amended, effective November 27, 1945, any party or counsel for the Board may, within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and four copies of a statement in writing, setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board. Any party desiring to submit a brief in support of the Intermediate Report shall do so within fifteen (15) days from the date of the entry of the order transferring the case to the Board, by



filing with the Board an original and four copies thereof, and by immediately serving a copy thereof upon each of the other parties and the Regional Director.

/s/ SIDNEY LINDNER,  
Trial Examiner.

Dated: June 20, 1946.

## Appendix A

### Notice to All Employees

Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not recognize International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, as the exclusive representative of our employees for the purpose of collective bargaining, unless and until said organization shall be certified by the National Labor Relations Board as the exclusive representative of such employees.

We Will Not in any manner encourage membership in International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, or any other labor organization, by yielding to pressure from that or any other labor organization or other pressure.

We Will Offer to Gus Cedar immediate and full reinstatement to his former or substantially equiv-

alent position without prejudice to any seniority or other rights and privileges enjoyed, and make him whole for any loss of pay suffered as a result of the discrimination.

All our employees are free to become or remain members of any labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

SCIENTIFIC NUTRITION  
CORPORATION,

Employer.

By.....

Representative.

Title.

Dated.....

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Case No. 20-C-1422

In the Matter of

SCIENTIFIC NUTRITION CORPORATION,  
d/b/a CAPOLINO PACKING CORPORATION,

and

FOOD, TOBACCO, AGRICULTURAL AND  
ALLIED WORKERS UNION OF AMERICA, CIO,

and

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,

Party to the Contract.

AFFIDAVIT AS TO SERVICE

District of Columbia—ss.

I, Alfred F. Clarke, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 13th day of December, 1946, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Decision and Order [and Intermediate Re-

port] to the following-named persons, addressed to them at the following addresses:

Mr. James R. Agee,  
1508 Financial Center Bldg.,  
Oakland, California. Reg. No. 69663.

Mr. Warren G. Horie,  
Merced, California. Re. No. 69664.  
[Return Receipts, Registered Mail, Attached]

Gladstein, Andersen, Resner, Sawyer & Edises,  
Att.: Bertram Edises, Esq.,  
1440 Broadway,  
Oakland, California. Reg. No. 69665.

Tobriner and Lazarus,  
Att.: Mathew O. Tobriner, Esquire,  
1035 Russ Building,  
San Francisco 4, California. Reg. No. 69666.

Plain Mail to:

Capolino Packing Corp.  
Atwater, California.

Food, Tobacco, Agricultural & Allied Workers of  
America, CIO,  
150 Golden Gate Avenue,  
San Francisco, California.

International Brotherhood of Teamsters, Chauffeurs,  
Warehousemen & Helpers of America,  
AFL,  
846 South Union,  
Los Angeles, California.

(Returned not resent, other representatives  
Notified, 1-2-47.)

/s/ ALFRED F. CLARKE.

Subscribed and sworn to before me this 13th day  
of December, 1946.

/s/ MERLE J. SMITH,

Designated Agent for the  
National Labor Relations  
Board

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In the United States Circuit Court of Appeals  
for the Ninth Circuit

No. 11694

NATIONAL LABOR RELATIONS BOARD,  
Petitioner,

vs.

SCIENTIFIC NUTRITION CORPORATION,  
d/b/a CAPOLINO PACKING CORPORATION,  
Respondent.

PETITION FOR ENFORCEMENT OF AN OR-  
DER OF THE NATIONAL LABOR RELA-  
TIONS BOARD

To the Honorable, the Judges of the United States  
Circuit Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to  
the National Labor Relations Act (Act of July 5,  
1935, 49 Stat. 449, c. 372, 29 U.S.C. § 151 et seq.),  
respectfully petitions this Court for the enforce-

ment of its order against respondent, Scientific Nutrition Corporation, d/b/a Capolino Packing Corporation, Atwater, California, and its officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of Scientific Nutrition Corporation, d/b/a Capolino Packing Corporation, and Food, Tobacco, Agricultural and Allied Workers Union of America, CIO, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, party to the contract, Case No. 20-C-1422."

In support of this petition, the Board respectfully shows:

(1) Respondent is a New York corporation, engaged in business in the State of California, within this judicial circuit, where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, the Board on December 13, 1946, duly issued an order directed to the respondent, and its officers, agents, successors, and assigns. The aforesaid order provides as follows:

#### ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations

Act, the National Labor Relations Board hereby orders that the respondent, Scientific Nutrition Corporation, d/b/a Capolino Packing Corporation, Atwater, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Encouraging membership in International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire or tenure of employment, or any term or condition of their employment;

(b) In any other manner encouraging or coercing its employees to become or remain members of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, or any other labor organization, whether or not because of pressure from that or any other labor organization, or because of other economic considerations.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to Gus Cedar immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to his seniority or other rights and privileges;

(b) Make whole Gus Cedar for any loss of pay he may have suffered by reason of the respondent's

discrimination against him, by payment to him of a sum of money equal to the amount that he normally would have earned as wages during the period from June 22, 1945, the date of his discharge, to the date of the respondent's offer of reinstatement, less his net earnings during said period;

(c) Post at its plant at Atwater, California, copies of the notice attached hereto, marked "Appendix A."<sup>1</sup> Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

(d) Notify the Regional Director for the Twentieth Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

(3) On December 13, 1946, the Board's Decision and Order was served upon respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to respondent's counsel.

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<sup>1</sup>In the event that this order is enforced by a decree of a Circuit Court of Appeals, there shall be inserted before the words "A Decision and Order," the words: "A Decree of the United States Circuit Court of Appeals Enforcing."



(4) Pursuant to Section 10 (e) of the National Labor Relations Act, the Board is certifying and filing with this Court a transcript of the entire record in the proceeding before the Board, including the pleadings, testimony and evidence, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceeding set forth in the transcript and upon the order made thereupon as set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board, and requiring respondent, and its officers, agents, successors, and assigns to comply therewith.

NATIONAL LABOR  
RELATIONS BOARD.

/s/ A. NORMAN SOMERS,  
Assistant General Counsel.

Dated at Washington, D. C., this 18th day of July, 1947.

APPENDIX A

Notice to All Employees Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the Na-

tional Labor Relations Act, we hereby notify our employees that:

We Will Not in any manner encourage or coerce our employees to become or remain members of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, or any other labor organization, whether or not because of pressure from that or any other labor organization, or because of other economic considerations.

We Will Offer to Gus Cedar immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to any seniority or other rights and privileges enjoyed, and make him whole for any loss of pay suffered as a result of the discrimination.

All our employees are free to become or remain members of any labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

SCIENTIFIC NUTRITION  
CORPORATION.

By .....,  
(Representative) (Title)

Dated.....

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

District of Columbia—ss.

A. Norman Somers, being first duly sworn, states that he is Assistant General Counsel of the National Labor Relations Board, petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing petition and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information and belief.

/s/ A. NORMAN SOMERS,  
Assistant General Counsel.

Subscribed and sworn to before me this 18th day of July, 1947.

[Seal]      /s/ KATHRYN B. HARRELL,  
Notary Public, District of Columbia.  
My Commission expires February 29, 1952.

[Endorsed]: Filed July 23, 1947.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS RELIED UPON  
BY THE BOARD

The Board submits the following statement of points upon which it intends to rely in the above-entitled proceedings:

I.

The Board's findings of fact that respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8 (1) and (3) of the National Labor Relations Act are supported by substantial evidence.

II.

The Board's order is valid and proper under the Act.

/s/ A. NORMAN SOMERS,  
Assistant General Counsel, National Labor Relations Board.

Dated at Washington, D. C., this 18th day of July, 1947.

CCA No. 11694

NOTICE OF FILING PETITION OF NLRB  
FOR ENFORCEMENT OF ITS ORDER

United States of America—ss.

The President of the United States of America to  
Food, Tobacco, Agricultural & Allied Workers  
of America, CIO, 150 Golden Gate Avenue, San  
Francisco, Calif., Greeting:

Pursuant to the provisions of Subdivision (e) of  
Section 160, U.S.C.A. Title 29 (National Labor  
Relations Board Act, Section 10(e)), you and each  
of you are hereby notified that on the 23rd day of  
July, 1947, a petition of the National Labor Rela-  
tions Board for enforcement of its order entered on  
December 13, 1946, in a proceeding known upon the  
records of the said Board as “In the Matter of  
Scientific Nutrition Corporation, d/b/a Capolino  
Packing Corporation, and Food, Tobacco, Agricul-  
tural and Allied Workers Union of America, CIO,  
and International Brotherhood of Teamsters,  
Chauffeurs, Warehousemen and Helpers of Amer-  
ica, AFL, Case No. 20-C-1422,” and for entry of a  
decree by the United States Circuit Court of Ap-  
peals for the Ninth Circuit, was filed in the said  
United States Circuit Court of Appeals for the  
Ninth Circuit, copy of which said petition is at-  
tached hereto.

You are also notified to appear and move upon,  
answer or plead to said petition within ten days  
from date of the service hereof, or in default of  
such action the said Circuit Court of Appeals for

the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Fred M. Vinson, Chief Justice of the United States, this 23rd day of July, in the year of our Lord one thousand nine hundred and forty-seven.

[Seal]      /s/ PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

### RETURN ON SERVICE OF WRIT

United States of America,  
Northern District of California—ss:

I hereby certify and return that I served the annexed Petition on the therein-named Food, Tobacco, Agricultural & Allied Workers of America, CIO, by handing to and leaving a true and correct copy thereof with Mrs. Roberta Montgomery, as International Representative of the Food, Tobacco, Agricultural & Allied Workers of America, CIO, personally at Oakland, California, in said District on the 30th day of July, A. D. 1947.

GEORGE VICE,  
U. S. Marshal.

By /s/ HERBERT R. COLE,  
Deputy.

#### Marshal's Fees

Travel .....	.70
Service .....	2.00
	<hr/> \$2.70

[Endorsed]: Filed July 31, 1947.

[Title of Circuit Court of Appeals and Cause.]

ANSWER TO PETITION OF NATIONAL LABOR RELATIONS BOARD TO ENFORCEMENT OF ITS ORDER

In answer to the petition of National Labor Relations Board, hereinafter referred to as the Board, for the enforcement of its order dated December 13, 1946, respondent Scientific Nutrition Corporation, d/b/a Capolino Packing Corporation, admits, denies and alleges as follows:

I.

Respondent admits that it is a New York corporation, engaged in business in the State of California within this judicial circuit.

II.

Respondent admits that the Board made an order on December 13, 1946, a portion of which is set forth in its petition.

III.

Said order of the Board, together with the Findings of Fact and Conclusions of Law upon which it is based, is not supported by a preponderance of the evidence nor by any fact or facts contained in the record, and is contrary to law.

IV.

The petition of the Board herein should be denied by this Court for the reason that to grant it would be to deny to respondent and to its employees the

rights guaranteed to them by the Labor-Management Relations Act of 1947 and the National Labor Relations Act and would lead to and create labor disputes obstructing the free flow of commerce.

Wherefore, respondent prays that said petition be dismissed.

Dated August 29, 1947.

/s/ J. PAUL ST. SURE,

/s/ EDWARD H. MOORE,

/s/ JAMES R. AGEE,

Attorneys for Respondent.

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In the United States Circuit Court of Appeals  
for the Ninth Circuit

No. 11694

NATIONAL LABOR RELATIONS BOARD,  
Petitioner,

vs.

SCIENTIFIC NUTRITION CORPORATION,  
d/b/a CAPOLINO PACKING CORPORATION,  
Respondent.

AFFIDAVIT OF SERVICE BY MAIL

State of California,

County of Alameda—ss.

Edward H. Moore, being sworn, says that he is a citizen of the United States, over 18 years of age,



a resident of Contra Costa County, and not a party to the within action. That affiant's business address is 1415 Financial Center Building, Oakland, California. That affiant served a copy of the attached Answer to Petition of National Labor Relations Board for Enforcement of its Order by placing said copy in an envelope addressed to A. Norman Somers, Ass't General Counsel National Labor Relations Board, at his office address Rochambeau Building, Washington, D. C., which envelope was then sealed and postage fully prepaid thereon, and thereafter was on August 28, 1947, deposited in the United States mail at Oakland, California. That there is delivery service by United States mail at the place so addressed, or regular communication by United States mail between the place of mailing and the place so addressed.

/s/ EDWARD H. MOORE.

Subscribed and sworn to before me this 28th day of August, 1947.

[Seal]      /s/ OLIVE A. BLEDSOE,  
Notary Public in and for the County of Alameda,  
State of California.

[Endorsed]: Filed Aug. 29, 1947.

NOTICE OF FILING PETITION OF NLRB  
FOR ENFORCEMENT OF ITS ORDER

Case No. 11694

United States of America—ss.

The President of the United States of America to Scientific Nutrition Corporation, d/b/a Capolino Packing Corp., Atwater, California, and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, 846 South Union, Los Angeles, California, Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10(e)), you and each of you are hereby notified that on the 23rd day of July, 1947, a petition of the National Labor Relations Board for enforcement of its order entered on December 13, 1946, in a proceeding known upon the records of the said Board as "In the Matter of Scientific Nutrition Corporation, d.b.a. Capolino Packing Corporation, and Food, Tobacco, Agricultural and Allied Workers Union of America, CIO, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, Case No. 20-C-1422," and for entry of a decree by the United States Circuit Court of Appeals for the Ninth Circuit, was filed in the said United States Circuit Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon,

answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Circuit Court of Appeals for the Ninth Circuit will enter such decree as it seems just and proper in the premises.

Witness, the Honorable Fred M. Vinson, Chief Justice of the United States, this 23rd day of July, in the year of our Lord one thousand nine hundred and forty-seven.

[Seal]      /s/ PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

# RETURN OF SERVICE OF WRIT

United States of America,  
Southern District of California—ss.

I hereby certify and return that I served the annexed Order to Show Cause on the therein-named Scientific Nutrition Corp., d/b/a Atwater Packing Corp., by handing to and leaving a true and correct copy thereof with Claudia Burrell, assistant secretary of Scientific Nutrition Corp., personally at Atwater, California, in said District on the 22nd day of August, 1947.

ROBERT E. CLARK,  
U. S. Marshal.

By /s/ JOSEPH B. TRACY,  
Deputy.

Marshal's Fees .....	2.00
Expenses .....	6.95

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Total .....\$8.95

## RETURN ON SERVICE OF WRIT

United States of America,  
Southern District of California—ss.

I hereby certify and return that I served the annexed Petition on the therein-named International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, by handing to and leaving a true and correct copy thereof with W. T. Carlyle, Attorney, at Los Angeles, in said District on the 8th day of August, 1947.

ROBERT E. CLARK,  
U. S. Marshal.

By /s/ DAVID E. HAXLER,  
Deputy.

Marshal's Fee .....	\$2.00
Mileage .....	.12
	<hr/>
Total .....	\$2.12

[Endorsed]: Filed Aug. 30, 1947.

[Title of Circuit Court of Appeals and Cause.]

## PETITION FOR LEAVE TO INTERVENE

To the Honorable United States Circuit Court of Appeals for the Ninth Circuit:

The petition of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and California State Council of Cannery Unions, AFL, respectfully shows that:

### I.

A petition for enforcement of an order of the National Labor Relations Board (hereinafter referred to as the Board) against respondent herein has heretofore been filed with the above Court by said Board, and the Clerk has heretofore issued a rule to show cause why said petition should not be granted.

### II.

The substance of said petition is that respondent encouraged or coerced its employees to become or remain members of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and in the course of so doing discharged a certain employee. Said petition prays enforcement of an order directing respondent to cease and desist from encouraging or coercing its members to become or remain members of petitioners herein, and further prays enforcement of an order directing respondent to reinstate to his former position and make whole a certain named person.

## III.

These petitioners, as collective bargaining agent of the respondent's employees and as possible parties to future collective bargaining agreements with the respondent, have a direct and substantial interest in the matters alleged in said petition and sought to be presented to the above-entitled Court. Petitioners herein have a direct and substantial interest in the successful defense of the party named as respondent in the above-entitled proceeding.

## IV.

A copy of the Complaint in Intervention which these petitioners ask leave to file is attached hereto and marked Exhibit "A."

Wherefore, your petitioners ask leave to intervene in this proceeding against the Board, petitioner therein, and that they be granted leave to file the proposed Complaint in Intervention, and for such other and further relief as to the Court may seem proper.

Dated this 19th day of September, 1947.

TOBRINER & LAZARUS,

By /s/ ALBERT BRUNDAGE,

Attorneys for Petitioners.

[Endorsed]: Filed Sept. 19, 1947.

[Title of Circuit Court of Appeals and Cause.]

## COMPLAINT IN INTERVENTION

Comes Now Plaintiffs in Intervention, after leave of this Court first had and obtained, and file this, their complaint in intervention, and for cause of action allege:

### I.

Plaintiff's in intervention, hereinafter referred to as AFL, are the successor union to Cannery Workers Union, Local 22382, a federal local union of the American Federation of Labor, hereinafter referred to as Local 22382. Local 22382 entered into a collective bargaining contract with respondent in 1941, by the terms of which contract the parties adopted and agreed to be bound by the master agreement previously executed by and between the California Processors and Growers, Inc., and AFL. The master agreement set forth wages, hours and conditions of employment and contained a so-called union shop provision. On May 3, 1945, the Executive Council of the American Federation of Labor transferred the federal labor unions in the canning industry to the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. On May 18, 1945, petitioners in intervention, as successors to Local 22382, entered into a collective bargaining agreement with respondent in which the respondent agreed to recognize the union as the sole collective bargaining agent for all the employees of the respondent covered by the master agreement between the California Proc-

essors and Growers, Inc. and the AFL. This contract likewise contained the so-called union shop agreement.

## II.

On May 11, 1945, the Cannery and Food Process Workers Council of the Pacific Coast advised the respondent that the employees of the respondent who were members of Local 22382 had terminated their membership in Local 22382 and organized under the name of Cannery and Food Process Workers Union of Modesto Area and had received a charter from the Cannery and Food Process Workers Council of the Pacific Coast. At said time and on May 18, 1945, when the contract with respondent was executed, AFL was the lawful representative of the employees of respondent for the purposes of collective bargaining. The mere presentation of said letter of May 11, 1945, did not alter or modify the collective bargaining status of petitioners.

## III.

Gus Cedar was discharged, pursuant to said union shop provision of said valid agreement of May 18, 1945, between respondent and petitioner. Since petitioner was the lawful collective bargaining representative of the employees on May 18, 1945, and since the agreement of May 18, 1945, between respondent and petitioners provided for a union shop provision, it was not only the right but the obligation of respondent to discharge all persons who failed to maintain their membership in petitioner union.



## IV.

The contention of the board that the receipt of the letter by respondent from the Cannery and Food Process Workers Council of the Pacific Coast halts the process of collective bargaining and forecloses the continuation of the relationship between the employer and the union, necessarily results in a hiatus in said process. Nothing contained in the National Labor Relations Act provides that such a letter forecloses collective bargaining and affords to a recalcitrant employer the opportunity to evade or disregard the collective bargaining obligation. Notwithstanding the provisions of the National Labor Relations Act and notwithstanding the practical debacle effected upon the bargaining process by its misinterpretation of the National Labor Relations Act, the Board would prevent AFL from continuing the existing relation and would divest the AFL of its contractual rights.

As and For a Second, Further, Separate, and Independent Cause of Action in Intervention, plaintiffs in intervention allege:

## I.

Plaintiffs in intervention, hereinafter referred to as AFL, hereby refer to all of the allegations of paragraphs I, II and III of the first cause of action and by said reference hereby incorporate said allegations herein as though set forth in full.

## II.

The National Labor Relations Board has ruled that a union must file a petition for certification within ten days after notifying the employer of its desire to bargain on behalf of the employees. No such petition was filed with said Board. Therefore, the charges filed by FTA-CIO are ineffective and void.

Wherefore AFL prays that the petition for enforcement of an order of the National Labor Relations Board in the above entitled cause be dismissed.

Dated: This 19th day of September, 1947.

TOBRINER & LAZARUS,

By /s/ ALBERT BRUNDIGE,

Attorneys for Petitioners.

State of California,

City and County of San Francisco—ss.

Albert Brundage, being first duly sworn, deposes and says:

That he is one of the attorneys for intervenors herein; that he has read the foregoing Complaint in Intervention and knows the contents thereof; that the same is true of his own knowledge except as to those matters therein alleged on information and belief, and as to those matters that he believes it to be true; that he makes this verification on behalf of intervenors for the reason that there is no officer of intervenors in the City and County of San Francisco authorized to verify said Complaint.

/s/ ALBERT BRUNDAGE.

Subscribed and sworn to before me this 19th day of September, 1947.

[Seal]      /s/ LOUIS WIENER,  
Notary Public in and for the City and County of  
San Francisco, State of California.

[Endorsed]: Filed Sept. 22, 1947.

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At a Stated Term, to wit: The October Term, 1946, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday the twenty-second day of September, in the year of our Lord one thousand nine hundred and forty-seven.

Present: Honorable William Denman, Circuit  
Judge, Presiding,

Honorable Homer T. Bone, Circuit Judge

Honorable William E. Orr, Circuit Judge.

[Title of Cause.]

## ORDER ALLOWING INTERVENTION

Upon reading the petition for leave to intervene submitted by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and California State Council of Cannery Unions, AFL, and good cause therefor appearing,

It Is Hereby Ordered that said petitioners be and they hereby are allowed to intervene in the above-entitled cause, and file and serve their Complaint in Intervention.

Before the National Labor Relations Board  
Twentieth Region

Case No. 20-C-1422

In the Matter of:

SCIENTIFIC NUTRITION CORPORATION,  
d/b/a Capolino Packing Corporation,

and

FOOD, TOBACCO, AGRICULTURAL & AL-  
LIED WORKERS UNION OF AMERICA,  
CIO,

and

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMER-  
ICA, AFL,

Party to the Contract.

Council Chamber, City Hall, Merced, California,  
Tuesday, May 14, 1946.

Pursuant to notice, the above-entitled matter came  
on for hearing at 10:10 a.m.

Before: Sidney Lindner, Esq.,  
Trial Examiner.

Appearances :

Robert E. Tillman, Esq., San Francisco, California, appearing on behalf of the National Labor Relations Board.

Warren G. Horie, Merced, California, appearing on behalf of Food, Tobacco, Agricultural & Allied Workers Union of America, CIO, the Charging Union. [1\*]

Tobriner & Lazarus, by Mathew O. Tobriner, 1035 Russ Bldg., San Francisco, California, appearing on behalf of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, Party to the Contract.

James R. Agee, 1508 Financial Center Building, Oakland California, appearing on behalf of Scientific Nutrition Corporation, d/b/a Capolino Packing Corporation, the Respondent. [2]

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\* Page numbering appearing at top of page of Reporter's certified Transcript of Record.

## PROCEEDINGS

\* \* \*

(Thereupon the documents above referred to were marked Board's Exhibit No. 1 (a) through 1 (i) inclusive for identification.)

Trial Examiner Lindner: Is there any objection to the receipt of these formal papers in evidence, Mr. Agee?

Mr. Agee: No objection.

Mr. Tobriner: No objection.

Trial Examiner Lindner: There being no objection Board's Exhibits 1 (a) to (i) inclusive are received in evidence.

(The documents heretofore marked Board's Exhibits Nos. 1 (a) through 1 (i) inclusive for identification were received in evidence.)

Trial Examiner Lindner: Before you proceed further, Mr. Tillman, unless you have other documents that you want to introduce at this time, I would like to call a short recess so that I can become acquainted with these papers and rule on your motion to dismiss, Mr. Tobriner.

Mr. Tobriner: I will submit the motion without argument if the Trial Examiner would so desire, and we may hold it over until the termination of the hearing when the ruling may be made.

Trial Examiner Lindner: Very well.

(Whereupon a short recess was taken.)

Trial Examiner Lindner: The hearing is in session.

Miss Reporter, please note that Mr. Warren G. Horie has entered an appearance for the FTA-CIO.

At this time, Mr. Tobriner, I will deny your motion to [8] dismiss.

You may proceed, Mr. Tillman.

Mr. Tillman: I will read into the record a proposed commerce stipulation.

“The Scientific Nutrition Corporation is a New York corporation having its principal office in New York City. It operates plants at Atwater, California, and at Colon, Cuba, where it is engaged in the business of canning and processing fruits and vegetables.

“At its Atwater, California, plant, the Respondent is engaged in business as the Capolino Packing Corporation. The annual sales of products from the Respondent’s Atwater plant total approximately \$1,500,000, of which approximately 90 per cent represents the amount of sales of products which are shipped from the plant in interstate commerce to points outside the State of California.

“The Respondent admits that in the operation of its Atwater plant it is engaged in commerce within the meaning of the National Labor Relations Act.”

Mr. Agee: That is so stipulated.

Mr. Tobriner: So stipulated.

Trial Examiner Lindner: Proceed.

Mr. Tillman: The parties have also indicated a

willingness to stipulate that the facts with respect to labor organization set out in Paragraph 2 of the Complaint are correct. [9]

Mr. Agee: So stipulated.

Trial Examiner Lindner: Do you so stipulate, Mr. Horie?

Mr. Horie: Yes.

Trial Examiner Lindner: Proceed.

Mr. Tillman: At this time, Mr. Examiner, the Board will call Mr. Cedar to the Stand.

### GUS CEDAR

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Tillman:

Q. Mr. Cedar, will you state your complete name for the record please?

A. Gus Cedar; G-u-s C-e-d-a-r.

Q. What is your address, Mr. Cedar?

A. Route 1, Box 10, Delhi.

Q. Mr. Cedar, were you ever in the employ of the company? A. Yes.

Q. When were you first employed by the company? A. About June, 1944.

Q. What was your position at that time?

A. I was boiler room man, boiler room operator you might call it.

Q. Did you hold any other position with the company? A. No.



(Testimony of Gus Cedar.)

Q. How long did you work for the company?

A. Approximately a year.

Q. What date did your employment terminate?

A. June 22nd.

Q. What year was that? A. 1945.

Q. During this period of your employment did you work as a seasonal laborer or were you regularly employed? A. I was regular.

Q. That is, for the whole year?

A. Yes, continuous.

Q. How did your employment happen to terminate? A. I was discharged.

Q. When did you learn that you were discharged? A. June 22nd.

Q. The same day you were discharged?

A. Same day.

Q. Where were you when you learned that you were discharged? A. In the boiler room.

Q. Was anyone present besides yourself?

A. Well, my helper, Mr. Jones was there.

Q. Who else?

A. And another man by the name of Bloom that operates the boiler plant in Fresno. He was present.

Trial Examiner Lindner: Can you hear the witness, Mr. Agee? [11]

Mr. Agee: It is very hard for me to hear him. I wonder if the witness would speak a little louder.

Trial Examiner Lindner: Yes, will you please speak a little louder.

Q. (By Mr. Tillman): Besides yourself, Jones and Bloom, who was in the boiler room?

(Testimony of Gus Cedar.)

A. Mr. Torreano and Mr. McIsaac and another representative from the Teamsters Union.

Q. Who is Mr. Torreano?

A. He is representative of the Teamsters Union.

Q. You say Mr. McIsaac was there?

A. Yes.

Q. Who is Mr. McIsaac?

A. He is the man across the table, Manager for the Company.

Mr. Agee: Superintendent.

Trial Examiner Lindner: Mr. McIsaac is Superintendent of the Company?

Mr. Agee: Yes, Superintendent.

Trial Examiner Lindner: Thank you, Mr. Agee.

Q. (By Mr. Tillman): What took place on this occasion?

A. Well, I was told that just about *that it* was time for me to decide what to do.

Q. Who told you?

A. Mr. Torreano. And I said that I didn't know just what I could do at present on account of the condition at work. I didn't know who was going to at that time be the union in [12] the can-nery, in other words.

Trial Examiner Lindner: Just a minute. You tell us what anybody said to you, naming the person that said it and what you said to them. Don't tell us what you thought at the time. Just tell us exactly what was said.

Proceed.

(Testimony of Gus Cedar.)

A. Well, Mr. Torreano asked me what I was going to do and I said I wasn't doing anything about it.

Q. (By Mr. Tillman): Doing anything about what?      A. Joining the Teamsters Union.

Q. Mr. Torreano wanted you to join the Teamsters Union?      A. Yes, and I said "No."

Q. Then what did he say?

A. He said to go to the office and get my time, I was fired.

Q. Mr. Torreano said that?

A. He said that.

Q. What happened then? Did any other conversation take place?      A. No.

Q. Did you say anything?

A. No. Mr. McIsaac said "I will have to get another man."

Q. Did Mr. McIsaac tell you to go to the office?

A. No, sir.

Q. What did you do after these men had talked to you in the boiler room? [13]

A. I went around and got my time.

Q. What time of the day was this?

A. 12:00 o'clock.

Q. Were you given any reasons orally by anyone as to why you were being discharged?

A. No.

Q. Did you question anybody in the company about your time being made up?      A. No.

(Testimony of Gus Cedar.)

Q. Were you given a discharge slip?

A. I was.

Q. When did you get the discharge slip?

A. About 12:00 o'clock.

Q. The same time you picked up your time?

A. At the same time, yes.

Q. Do you have any idea when the discharge slip was made out?      A. No, sir.

Mr. Tillman: I will ask that this document bearing the title "Employers Termination Notice" be marked for identification as Board's Exhibit 2.

(Thereupon the document above referred to was marked Board's Exhibit No. 2 for identification.)

Q. (By Mr. Tillman): Mr. Cedar, I will show you Board's Exhibit 2 for identification. Can you tell us what that is? [14]

A. Yes.

Q. What is it?

A. That is my discharge from the company.

Q. Is that the slip that you received on June 22, 1945?      A. Yes.

Q. The slip bears the signature "C. Burrell," or "Burnell." What is that?      A. "Burrell."

Q. Who was C. Burrell?

A. Clerk in the office. What capacity I don't know, official capacity.

Mr. Tillman: I will offer this exhibit in evidence with the request that I have leave to substitute copies therefor.

(Testimony of Gus Cedar.)

Trial Examiner Lindner: Is there any objection to receipt of Board's Exhibit 2?

Mr. Tobriner: No objection.

Mr. Agee: No objection.

Trial Examiner Lindner: Mr. Horie?

Mr. Horie: No objection.

Trial Examiner Lindner: There being no objection, Board's Exhibit 2 is received in evidence.

(The document heretofore marked Board's Exhibit No. 2 for identification was received in evidence.)



# Board's Exhibit No. 2

United States Employment Service  
California

## EMPLOYERS TERMINATION NOTICE

B' N

To: Local USES Manager, \_\_\_\_\_, California Date June 22, 1945  
(City)

This is to notify you that:

Name GUS CEDAR, S.S.A. No. 556-057 171

Address R. 1 BOX 10 DELHI, CAL.

Occupation BOILER ROOM MAN Employed at CAPOLINO PACKING CORP  
(Location)

has left the employ of this company effective JUNE 22, 1945  
(date)

Check	Reason for Termination
<input type="checkbox"/>	Resigned: Reason: _____
<input checked="" type="checkbox"/>	Discharged: Reason: <u>REFUSAL TO JOIN</u> <u>UNION (A F OF L) TEAMSTERS</u>
<input type="checkbox"/>	Lay Off: Anticipated Duration: _____

CAPOLINO PACKING CORPORATION  
(Name of Employer)

By C. Burrell

Title Book Keeper

Address \_\_\_\_\_

1 copy to Local USES Office

1 copy to Employee

1 copy Retained by Employer

Form ES 1677  
(9-42)

IN EV.

NATIONAL LABOR RELATIONS BOARD

CASE NO. 20-C-422 { PETITIONER / RESPONDENT } EXHIBIT NO. 2

IN THE MATTER OF SCIENTIFIC NUTRITION CORP.  
DATE 5/14/46 : GUS CEDAR

FILED FISHBURN, OFFICIAL REPORTER  
BY M. SCHOLZ





Q. (By Mr. Tillman): Mr. Cedar, when you were first employed by the company was there a union in the plant which represented [15] the company's employees? A. There was.

Q. What was the name of that union?

A. That was Local 22382, Modesto.

Q. Was it affiliated with any national organization?

A. Affiliated with the American Federation of Labor.

Q. Were you a member of Local 22382?

A. I was.

Q. When did you first become a member?

A. November 8, 1940.

Q. During the time in which you were a member was any attempt made to have the Teamsters take jurisdiction of Local 22382?

Mr. Tobriner: Objected to on the ground that the question is uncertain to say "was any attempt." It is asking for an opinion.

Trial Examiner Lindner: I will sustain that objection.

Mr. Tillman, I would suggest that you focus your questions with respect to the particular Respondent that we are dealing here with.

Q. (By Mr. Tillman): The membership of Local 22382, did that comprise just employees of the company? A. At this plant, it was.

Q. Were there other employees of other companies who were members of Local 22382?

A. I don't understand the question.

Mr. Tobriner: I am going to object to it anyway because it would be immaterial, would it not?

Trial Examiner Lindner: Well, I don't think so. I will overrule the objection.

Was Local 22382 a Local that had as its members employees of other plants besides the Capolino Packing Corporation?

The Witness: It was.

Trial Examiner Lindner: All these different employees of the various companies were members of the one Local 22382, is that correct?

The Witness: Correct, sir.

Q. (By Mr. Tillman): I will ask you then, Mr. Cedar, if, during the time that you were a member of Local 22382 there was any discussion of Local 22382 affiliating with the Teamsters?

A. Not to my knowledge.

Q. During the time that you were employed at the company had you heard any discussion that Local 22382 was going to affiliate with the Teamsters? A. Yes, I have heard discussions.

Q. When did you first learn that the Teamsters contemplated taking jurisdiction of the Cannery Workers Local?

Mr. Tobriner: I object.

Mr. Agee: I object to that on the ground it is wholly [17] without the issues and immaterial as to the Respondent Company. I can't see what purpose that question would have. Would that be binding on us? The question is "When did you first learn that there was going to be an attempt."

(Testimony of Gus Cedar.)

Mr. Tillman: That the Teamsters contemplated——

Trial Examiner Lindner: I will overrule the objection, Mr. Agee.

Mr. Tobriner: We also object on the ground that what contemplations or mental attitudes or intentions the Teamsters had, whomever they may be, would be immaterial. We have not centered the word "Teamsters" on any particular organization, or who it is or where it was or what time it was.

Trial Examiner Lindner: Mr. Tillman is undoubtedly referring to the Teamsters Union that now has a contract with the Respondent. Is that correct?

Mr. Tillman: That is correct, yes. I was using a shorthand title with reference to the party to the contract.

Mr. Tobriner: I object on the ground that the intention and the contemplation would be immaterial. The only thing we are interested in, I think, Mr. Examiner, is what happened or what facts occurred; and the witness' ideas or opinions about the Teamsters' contemplation would hardly be of any interest to us here.

Trial Examiner Lindner: I think you might well rephrase the question, Mr. Tillman. What we undoubtedly want to know [18] is when the witness learned the Teamsters Union had obtained recognition from the Company.

Mr. Tillman: My question is preliminary to the question of when the Teamsters Union was recog-

(Testimony of Gus Cedar.)

nized by the Company. It is more or less background material without which the recognition by the company won't present a clear picture.

Trial Examiner Lindner: Very well, proceed. I will overrule your objection, Mr. Tobriner.

Q. (By Mr. Tillman): Do you remember the question? When did you first learn that the Teamsters contemplated taking over Local 22382?

A. I would say about the latter part of April or first part of May.

Q. How did you learn of this matter?

Trial Examiner Lindner: That is in 1945, is that correct?

Q. (By Mr. Tillman): Is that correct?

A. Yes.

Well, we were called at a meeting called by the company up there in the warehouse, and Mr. Capolino told us.

Q. Is this the first time that you learned that the Teamsters had been awarded jurisdiction or were going to take jurisdiction?

A. First time I learned from the company. Before that it was rumored. [19]

Mr. Tobriner: In other words, is the answer then—I am not clear on that answer.

Trial Examiner Lindner: Read the answer, please.

(The answer referred to was read by the reporter.)

(Testimony of Gus Cedar.)

Q. (By Mr. Tillman): Mr. Cedar, I might ask you if you had been given any notice by anyone that the Teamsters were going to take jurisdiction?

A. No, sir.

Q. Then you were telling us when you first learned. What was the occasion?

A. That was the time when Mr. Capolino told us in the warehouse.

Q. Who is Mr. Capolino?

A. Mr. Capolino.

Q. Who is he?

A. He was the owner of the company.

Q. Whom did he call together in the warehouse?

A. Everybody in the plant.

Q. What took place at that meeting?

A. He said that he had received notice that the Teamsters Union were going to take over the plant, and there was nothing we could do about it, and he wanted to know what we were going to do about it.

Mr. Agee: I didn't hear that.

Trial Examiner Lindner: Read the answer. [20]

(The answer referred to was read by the reporter.)

Q. (By Mr. Tillman): Did he state anything else to the employees?

A. Yes, he also said, "If you don't go with the Teamsters they will quit delivery, the plant will be tied up and we will all be out of work."

Q. Was there anything else?

A. Well, may I say what I said?

(Testimony of Gus Cedar.)

Q. Did Mr. Capolino say anything else?

A. No. That was about all he said.

Q. Did anyone else say anything at this meeting?

A. No, sir. May I say what I said?

Trial Examiner Lindner: Did you say anything at the meeting?

The Witness: I asked Mr. Capolino to give us time to contact our Union in Modesto, 22382, and find out what it was all about.

Q. (By Mr. Tillman): Was any reference made to any letters from the Teamsters?

A. Not at that time.

Q. While you were working for the company did you see anyone in the plant soliciting membership for the Teamsters? A. I did.

Q. When was the first time that you saw anyone soliciting membership for the Teamsters? [21]

A. Well, it was shortly thereafter, after we had the first meeting. I would say some time in the first part of May.

Q. Shortly after this meeting with Capolino?

A. Yes, sir.

Q. Did you say there was another meeting?

A. There was.

Q. Who called this meeting?

A. Company, I suppose.

Q. Who told you to attend the meeting?

A. I was told by one of the workers, "Come to the warehouse, we are going to have the meeting."

Q. Is that where the meeting was held?

A. Yes, sir.

(Testimony of Gus Cedar.)

Q. Who was at that meeting?

A. Mr. King, Mr. Brown, Mr. Torreano and three or four more men that I don't know the names of, but they were representatives of the Teamsters Union.

Trial Examiner Lindner: How do you know that?

The Witness: They were introduced as such.

Q. (By Mr. Tillman): King and Brown were representatives of the Teamsters? A. Yes.

Q. Besides the representatives of the Teamsters, who else attended the meeting?

A. Well, Mr. McIsaac and Mr. Stewart. [22]

Q. Who is Mr. Stewart?

A. He was then called Superintendent of the Plant. I don't know what he really was, but he was called "Superintendent." He was next to Mr. McIsaac.

Q. He reported to Mr. McIsaac, did he?

A. Well, he did.

Q. Was he over any particular part of the cannery?

A. I was told he had charge of the actual work in the cannery.

Q. Of all the work?

A. Yes, I would say so.

Q. You have told us representatives of the Teamsters were there and Mr. McIsaac and Mr. Stewart. Who else was there?

A. Everybody else that worked in the Plant.

(Testimony of Gus Cedar.)

Q. Was this meeting during regular working hours?      A. It was.

Q. What took place at the meeting?

A. Well, Mr. King wanted us to sign up with the Teamsters and he wanted to know how many was ready to sign up, and that was all that was said. It was just a meeting trying to have us sign up for the Teamsters.

Mr. Tobriner: Objected to on the ground that is conclusion and opinion of the witness after "all that was said." "It was such and such and such" is conclusion and opinion.

Trial Examiner Lindner: I sustain the objection.

Q. (By Mr. Tillman): Did anyone say anything besides Mr. [23] King?

A. Well, there were just comments made by the other members of the Teamsters Union he brought in, but I couldn't repeat what was said. But like I said, it was all in the line of trying to have us sign up with the Teamsters Union.

Mr. Tobriner: Objected to.

Trial Examiner Lindner: You have an objection?

Mr. Tobriner: I have an objection. That again is opinion and conclusion. He doesn't state to whom those statements were attributed.

Trial Examiner Lindner: I will sustain the objection.

Mr. Tillman, if you will please get from the witness exactly what Mr. King said with respect to the



(Testimony of Gus Cedar.)

employees with respect to his request, if such a request was made that the employees sign up with the Teamsters——

Q. (By Mr. Tillman): Mr. Cedar, just tell us the conversation you remember, and not your conclusions of what the meeting was for. Could you tell us again what Mr. King said to the employees?

A. That is just what he said. He wanted us to say whether we were going to sign up or not. That was the conversation.

Trial Examiner Lindner: Did he have with him, did Mr. King have with him any application cards for the Teamsters Union?

The Witness: I don't know. [24]

Trial Examiner Lindner: Did he have any literature for the Teamsters Union that he gave to the employees that were assembled there?

The Witness: I don't think he had. I didn't see any.

Trial Examiner Lindner: In other words, all he said, according to your testimony, is that he wanted to know when the employees were going to sign up for the Teamsters Union, is that correct?

The Witness: That is correct, sir.

Q. (By Mr. Tillman): You testified a short while ago that the representatives of the Teamsters were introduced as representatives of the Teamsters. Who introduced them as such?

A. Mr. King.

Q. Mr. King did? A. Yes.

Q. Did anyone introduce Mr. King to you?

A. No.

(Testimony of Gus Cedar.)

Q. Did you know Mr. King beforehand?

A. Yes, sir.

Q. How did you know him?

A. Well, he was connected with our Local 22382.

Q. Had he been an official or something?

A. He had taken the place of Mr. Tomson which was then Secretary-Treasurer of Local 22382. [25]

Q. After the meeting at which Mr. King spoke to the employees, did the representatives of the Teamsters solicit employees individually?

A. Yes.

Q. What did you observe? What did you see take place?

A. Well, each one was asked pointblank if they were going to sign up or not. That is about all that took place.

Q. Did anyone ask you? A. Yes.

Q. Do you remember who asked you?

A. Mr. Torreano and Mr. King.

Trial Examiner Lindner: Was Mr. King an employee of the company?

The Witness: No, he represented the Teamsters.

Trial Examiner Lindner: He was not an employee of the company?

The Witness: No, he was not.

Trial Examiner Lindner: Mr. Torreano was an employee of the company, is that correct?

The Witness: No, Mr. Torreano was a representative of the Teamsters Union.

Trial Examiner Lindner: He was not an employee of the company either?

The Witness: No, sir.

(Testimony of Gus Cedar.)

Trial Examiner Lindner: You testified that they asked [26] you to join the Teamsters?

The Witness: Correct.

Trial Examiner Lindner: Did that happen while you were at work in the plant?

The Witness: Yes, sir.

Trial Examiner Lindner: When did that happen, do you remember?

The Witness: Exact date?

Trial Examiner Lindner: To the best of your knowledge.

The Witness: Well, I would say about the middle of June—no, middle of May.

Trial Examiner Lindner: Did that happen after this meeting that you just testified to?

The Witness: Correct.

Trial Examiner Lindner: Both of these men, Mr. King and Mr. Torreano, asked you to join the Teamsters Union, after this meeting, is that correct?

The Witness: That is correct.

Trial Examiner Lindner: Proceed.

Q. (By Mr. Tillman): I want the record to be clear there now. Did these men come around there to you right after the meeting on the same day of the meeting? A. Yes.

Q. Were there any more meetings at which the Teamster representatives spoke to the employees like this one you have just [27] described?

A. Yes, there was a second meeting.

(Testimony of Gus Cedar.)

Q. When did that occur with respect to this first one? How much later?

A. About a week later, I would say.

Q. How was that meeting called?

A. Same manner. I was called to go to the warehouse and have a meeting.

Q. By some employee?

A. Someone of the employees called me.

Q. Was the meeting held in the warehouse?

A. It was.

Q. Who was present this time?

A. The same people that were at the first meeting the Teamsters Union had.

Q. Were all the employees present?

A. To my knowledge they were. I guess everybody working was there.

Q. Can you identify any of the representatives of the Teamsters that attended this second meeting?

Mr. Tobriner: Mr. Tillman, isn't that a third meeting now?

Mr. Tillman: The second Teamsters meeting, but a third meeting.

Trial Examiner Lindner: For the purposes of this record, [28] in order to have the record clear, this witness is testifying to a third meeting that took place in the plant premises?

Mr. Tillman: Yes.

Q. (By Mr. Tillman): Can you identify any of the Teamsters that were present at this meeting?

A. There were Mr. King, Mr. Brown and I am not certain about Mr. Torreano, but of course I won't say "I think."

(Testimony of Gus Cedar.)

Q. You stated the same people as were—well, it is going to be confusing—at the second meeting or the first meeting at which you said Teamsters came into the plant. You testified Mr. McIsaac and Mr. Stewart were there. Were they at this third meeting also? A. They were.

Trial Examiner Lindner: Mr. Tillman, will you have the witness identify the positions that Mr. King, Mr. Brown and Mr. Torreano held with the Teamsters, if he knows.

Q. (By Mr. Tillman): Do you know whether or not any of those three gentlemen, King, Brown or Torreano held any office in the Teamsters Union?

A. Mr. King introduced himself as working for the Teamsters Union.

Q. Did he say in what capacity?

A. No, sir, he did not.

Q. What about Brown and Torreano?

A. We were never told what capacity they held in the Teamsters [29] Union.

Trial Examiner Lindner: Were they introduced to you at these meetings that you have testified to as representatives of the Teamsters Union?

The Witness: They were, sir.

Trial Examiner Lindner: Did Mr. King so introduce them?

The Witness: Yes, sir.

Trial Examiner Lindner: By the way, did either Mr. McIsaac or Mr. Stewart, at the second meeting that you testified to, do any talking to the employees?

The Witness: No, sir.

(Testimony of Gus Cedar.)

Trial Examiner Lindner: Where did they sit, or where were they present at the time of the meeting?

The Witness: We were lined up like employees was on our left and the Teamsters were facing the employees and the officials as Mr. McIsaac, Mr. Stewart and two or three others was on our right, so we just about made a ring, I would say.

Trial Examiner Lindner: In other words, all the employees were standing around in the warehouse, is that correct?

The Witness: That is right.

Trial Examiner Lindner: From your description, the representatives of the Teamsters Union were opposite the employees, and Mr. McIsaac and Mr. Stewart were on one side, [30] is that correct?

The Witness: Correct, sir.

Trial Examiner Lindner: Proceed.

Q. (By Mr. Tillman): At this last meeting that you are talking about what took place?

A. Repetition of the first meeting.

Q. Who was spokesman at this meeting, the third meeting? A. Mr. King.

Q. What is your best recollection of what was said at this meeting?

A. Trying to get us to sign up.

Q. Just tell us, try to tell us the words that Mr. King said to you or to the employees.

A. Well, it's pretty hard to repeat his words, but what he said was this: That he just told us there was nothing we could do, just wanted to know when we were ready to sign up. He had already gotten

(Testimony of Gus Cedar.)

some members but there were quite a few holding off.

Q. What else did he say?

Trial Examiner Lindner: How long did these meetings last, Mr. Witness?

The Witness: I would say they lasted about 10 to 15 minutes.

Trial Examiner Lindner: What time of the day was this meeting held? [31]

The Witness: It was in the middle of the day, but I am not sure whether it was shortly before noon or shortly after noon.

I will also state that Mr. King said that "If you boys don't sign up, you will be all sitting out in the park because this plant is going to be closed."

Trial Examiner Lindner: When did he say that? Was that at this last meeting?

The Witness: I believe that was the last meeting.

Q. (By Mr. Tillman): After this last meeting did the Teamster representatives go around in the plant as they had done in the second meeting talking to individual employees? A. Yes.

Q. Did any of them talk to you again?

A. Yes, Mr. Torreano talked to me again, wanted to know what I was going to do about it. I said "Not anything about it right now."

Q. Is that all that was said then?

A. He answered me and said, "Well, either sign up or else," he said, "You know, out you go."

Q. Were there any other meetings?

Mr. Agee: Pardon me, who did he say said that?

Mr. Tillman: Torreano.

(Testimony of Gus Cedar.)

Q. (By Mr. Tillman): Can you recall any other meetings at which all the employees were gathered together? [32]

A. There was a fourth meeting held by the company which was held by Mr. McIsaac, I think, where he was the speaker, and he said that——

Mr. Tobriner: Give us the date, please.

Q. (By Mr. Tillman): Let us have the time as best you can approximate it with relation to the third meeting.

A. I would say that was the latter part of May or perhaps the first part of June.

Q. Where was this meeting?

A. It was held in the Cooking Department.

Q. Cooking? A. Cooking Department.

Q. Who attended that meeting?

A. All employees.

Q. Were there any representatives from outside of the plant at this meeting? A. No, sir.

Q. Who said what at this meeting?

A. Mr. McIsaac made a statement that the company had signed up with the Teamsters and it was too late now to do anything about it.

Q. Had signed up with the Teamsters?

A. Yes.

Q. Did he state anything more in that particular place? A. No. [33]

Q. You don't recall any more? A. No.

Q. Did he mention that they had signed a contract?

A. I don't know if he made that statement, but that is how I understood it.



(Testimony of Gus Cedar.)

Q. Do you recall anything else that was said by Mr. McIsaac? A. No, sir.

Q. Was there any reference to the Seafarers Union? A. No, sir.

Q. Did anyone make any comments after Mr. McIsaac spoke? A. Not to my knowledge.

Q. Is he the only one that said anything at the meeting?

A. I believe I said that I didn't call the Teamsters in here. I believe that was the only statement that was made, and I think I made that in reference to what he said, that it's too late to do anything about it. I said, "I didn't call the Teamsters in here."

Q. To whom did you say that?

A. I told it to Mr. McIsaac.

Trial Examiner Lindner: What did you mean by that?

Mr. Agee: Pardon me, I don't like to object to the Trial Examiner's question. What he meant by it, I would certainly think would be his opinion and conclusion and not in any way binding on the company I represent.

Trial Examiner Lindner: Yes, I understand that. I just [34] wanted to find out from the witness what he meant when he said he didn't call the Teamsters in there.

Mr. Agee: That would be allowing him to engage in giving an opinion and conclusion. He might have his own ideas and conjectures about this thing. For all I know, he might suspect, without any more than mere conjecture, that the company called the

(Testimony of Gus Cedar.)

Teamsters in, and if you ask him that question he might say "My idea was that the Company called the Teamsters in," but he had no evidence on which to base it. That is the danger of the question.

Trial Examiner Lindner: Suppose we let the witness answer and see if you have objections?

The Witness: Shall I answer?

Trial Examiner Lindner: Yes.

The Witness: That is just what I meant by it, that the company called the Teamsters in and it was not to blame us for it.

Mr. Tobriner: We move it be stricken.

Trial Examiner Lindner: I will grant the motion to strike the witness' answer.

Proceed, Mr. Tillman.

Q. (By Mr. Tillman): Did you ever have any conversation involving the Teamsters with Mr. McIsaac? A. Yes, I had one conversation.

Q. When did that take place? [35]

A. I said it was about the middle of May.

Q. Was it before this meeting at which Mr. McIsaac spoke, or after? A. Yes, it was.

Q. Before? A. Yes.

Q. Where did you talk to Mr. McIsaac?

A. In Mr. McIsaac's office.

Q. Who was there besides Mr. McIsaac and yourself? A. No one.

Q. Tell us what Mr. McIsaac said and then what you said.

A. Uh-huh. Mr. McIsaac wanted to know what I am going to do about it, whether I am going to

(Testimony of Gus Cedar.)

join the Union. I answered back that I hadn't made up my mind as yet.

Q. Is that all the conversation?

A. That is all, yes.

Trial Examiner Lindner: Did he ask you whether you were going to join the Teamsters?

The Witness: Yes.

Q. (By Mr. Tillman): Did you tell him why you hadn't made up your mind?

A. I think I made some comment that I didn't know who was going to be the Union in the Cannery, so naturally I wanted to safeguard my own interest and wanted to wait and see.

Q. Did you ever have any conversation by yourself with Mr. [36] Capolino? A. Yes.

Mr. Tobriner: I will object to this on the ground that Mr. Capolino is deceased. Conversation which he held with him, at least under common law rules would not be admissible because we would have no way of checking on what the witness states and what he claims was stated by Mr. Capolino.

I realize this is a looser procedure——

Trial Examiner Lindner: I wouldn't say the procedure was looser, but in procedure here we are not bound by strict rules of evidence, as you know, Mr. Tobriner, but I think as a matter of fact, I am sure that we should like to have all of the facts, and even though Mr. Capolino is not here to contradict any facts that this witness may testify to, it is the job of the Trial Examiner to determine whether the witness is telling the truth.

Mr. Agee: Of course it might be of some aid

(Testimony of Gus Cedar.)

and assistance to the Trial Examiner if the person supposed to be on the other side of the conversation was available and say, was not called, something of that sort.

We have the so-called "dead man rule" embodied in our code in California, and we have the rule that a claim cannot be made based upon oral conversation with the decedent on the very fair ground the decedent is not there to deny or dispute it. [37]

Trial Examiner Lindner: Suppose we let the witness testify and I will consider the rule that you have just stated.

You may answer the question. Do you remember the question?

A. Yes. The question was: You want to know if we were going to sign up with the Teamsters Union.

Q. (By Mr. Tillman): Have we put the time and the place of this in? I don't think we have.

Let me ask you first if you remember when this conversation took place with Mr. Capolino?

A. Yes, it was just about the first or second week in June. It was not very long before I got fired.

Q. Where was the conversation?

A. In the boiler room.

Q. Who was in the boiler room?

A. Myself and Mr. Jones.

Q. Your helper?

A. Helper, worked with me.

Q. How did it happen Mr. Capolino came into the boiler room at this particular time?

(Testimony of Gus Cedar.)

A. He come down about this here slip, sent around, signing applications for the Seafarers Union. Somebody had gotten them into the Cannery and he had gotten hold of them and he came down to the boiler room and wanted to know what it was all [38] about and I said, "Don't blame me for it. I didn't bring them in here."

Trial Examiner Lindner: Did he ask you what it was all about?

The Witness: Yes, about what this here signing up was.

Trial Examiner Lindner: Did he show you this piece of paper that you are talking about?

The Witness: Yes, sir.

Trial Examiner Lindner: When he asked you what it was all about?

The Witness: Yes, he said, "You can't do those things around here. If you want to work here you have to join the Teamsters Union."

Q. (By Mr. Tillman): Did you say anything else than what you have testified here?

A. No, I didn't say anything else.

Mr. Tobriner: We move it be stricken on the ground of the Common Law Rule, Civil Code Rule in California that the witness, stating what he said Mr. Capolino stated, could not be controverted because of Mr. Capolino's death, and the rule is if death closes the mouth of the party the witness cannot put words in it.

Trial Examiner Lindner: The motion is denied.

(Testimony of Gus Cedar.)

For the record, Mr. Agee, and Mr. Tobriner, when did Mr. Capolino pass away. [39]

Mr. Agee: Thanksgiving morning 1945.

Q. (By Mr. Tillman): Mr. Cedar, when you were first employed by the company in June of 1944 was there a check off of dues for Local 22382?

A. There was.

Q. How long did that check off continue?

A. It continued until 1945.

Q. What month?

A. First of the year, discontinued after New Year.

Q. Did Local 22382 continue to collect dues from January of 1945 on? A. Yes.

Q. How did they collect dues then?

A. Through the shop steward.

Q. After the Teamsters came, or after one of these meetings in which the Company said they had signed with the Teamsters, did the Teamsters have a check off in the plant?

A. It was, I understand it was begun——

Trial Examiner Lindner: Don't tell us what you understand. Did they have a check off? Did the plant check off union dues for the employees' wages after the Teamsters came into the plant?

The Witness: They did.

Trial Examiner Lindner: Were the Union dues checked off from your wages? [40]

The Witness: No, sir.

Q. (By Mr. Tillman): During the time that you were a member of Local 22382 was there ever

(Testimony of Gus Cedar.)

an occasion, or did you ever attend any meeting where membership voted on whether or not to affiliate or to join up with the Teamsters?

Mr. Tobriner: Just a minute, Mr. Tillman, will you limit the time, please.

Q. (By Mr. Tillman): I can limit the time to May or June of 1945.

During that time did you attend any meeting of Local 22382 at which they voted on the question of whether or not they would join up with the Teamsters?

Trial Examiner Lindner: Mr. Tillman, pardon me for interrupting you, but the witness testified previously if I remember correctly, that Local 22382 had as members employees of various plants in and around this area. I think we should know whether the employees of the particular plant involved met as a separate unit in Local 22382 before that line of questioning continues.

Mr. Tillman: I will withdraw the question and go back further yet.

Q. (By Mr. Tillman): Did you ever attend any meetings of Local 22382? A. I did.

Q. Where were those meetings held? [41]

A. Modesto.

Q. Were any meetings held of just the employees at the plant? A. Yes, in Merced.

Q. They were held in Merced? A. Yes.

Q. How often were these meetings in Merced held?

A. I believe there were only two meetings held.

(Testimony of Gus Cedar.)

Q. In Merced? A. Yes.

Q. How often did the entire local meet in Modesto? A. Once a month, but not regular.

Q. Did you attend the meetings which were held in Modesto—all you can remember.

A. I attended three meetings as far as I can remember. I attended three meetings in 1945.

Mr. Tobriner: Those meetings you are referring to are in Modesto?

Mr. Tillman: Yes.

Q. (By Mr. Tillman): At any of those meetings were the members given an opportunity or asked to vote on the question of whether or not the Local should join up with the Teamsters?

A. No.

Trial Examiner Lindner: Was it ever discussed?

The Witness: Not to my knowledge. [42]

Q. (By Mr. Tillman): Do you know whether the Local voted to join with the Teamsters at any meeting that you were not present at?

Mr. Agee: I object to that as calling for hearsay.

Trial Examiner Lindner: Objection sustained.

Q. (By Mr. Tillman): Do you know of any union by the name of Cannery and Food Process Workers Union of Modesto area? A. Yes, sir.

Q. How do you know that Union?

A. I have got a book on it. I was a member.

Q. You were a member? A. I was.



(Testimony of Gus Cedar.)

Q. When did you become a member of that Union?      A. June.

Q. 1945?      A. 1945.

Trial Examiner Lindner: Is that another union now?

Mr. Tillman: Yes.

Trial Examiner Lindner: That is different from the Unions that we have already talked about on the record?

Mr. Tillman: Yes.

Q. (By Mr. Tillman): Do you know how this new union that we are just talking about now came into being?

Mr. Tobriner: Objected to.

A. No. [43]

Mr. Tobriner: Oh, well——

Trial Examiner Lindner: Did you have an objection?

Mr. Tobriner: Well, he doesn't know.

Q. (By Mr. Tillman): Who were the officers of the Cannery and Food Process Workers Union?

Mr. Tobriner: At what time, Mr. Tillman?

Mr. Tillman: June, 1945.

A. At that time that was organized, Mr. Tomson was then the Secretary and Mr. Burrow was President.

Q. (By Mr. Tillman): Had any of those gentlemen held office in Local 22382?      A. Yes.

Q. Which gentlemen have held office?

A. Mr. Tomson was Secretary-Treasurer and Mr. Burrow was President.

(Testimony of Gus Cedar.)

Trial Examiner Lindner: Of Local 22382?

The Witness: Correct.

Q. (By Mr. Tillman): Who collected dues for this Cannery and Food Process Workers Union, or how were they collected?

Mr. Tobriner: Just a minute, what date, Mr. Tillman?

Mr. Tillman: June, 1945.

Trial Examiner Lindner: You may answer the question. Who collected dues, how were they collected?

The Witness: We paid into the office.

Trial Examiner Lindner: Where was the office located? [44]

The Witness: Modesto. The office was moved sometimes.

Trial Examiner Lindner: In June of 1945 the offices were located in Modesto, is that correct?

The Witness: That is correct.

Trial Examiner Lindner: When did you become a member of this Cannery and Fruit Workers Union?

Mr. Tobriner: Food Process Workers Union of Modesto Area.

Trial Examiner Lindner: When did you become a member of that?

The Witness: June.

Trial Examiner Lidner: What date?

The Witness: The date is in the book here. Do you want it in evidence?

(Testimony of Gus Cedar.)

Trial Examiner Lindner: Just read the date. You may refresh your recollection from that.

The Witness (reading from document): June 22, 1945.

Mr. Tobriner: Mr. Trial Examiner, I don't know if it is permissible, but I would like to see the document the witness is reading from.

Trial Examiner Lindner: Yes.

(The document was handed to counsel.)

Trial Examiner Lindner: Did you become a member of that Cannery and Food Process Workers Union while you were still employed by the Company? [45]

The Witness: Yes.

Trial Examiner Lindner: You were discharged on June 22, 1945, is that correct?

The Witness: That is correct.

Trial Examiner Lindner: You became a member of this Union on June 22, 1945, is that correct?

The Witness: No, previous to that.

Trial Examiner Lindner: Previous to that?

The Witness: Yes.

Trial Examiner Lindner: Do you remember when?

The Witness: It's in the book there, June. It's a transfer there from the old 22382 into this Union, see.

Trial Examiner Lindner: According to this dues payment book that you have here, Mr. Cedar,

(Testimony of Gus Cedar.)

it indicates that you became a member June 2, 1945.

The Witness: Is that what it has?

Trial Examiner Lindner: Dues were paid for months prior to that.

Mr. Tobriner: Initiation is January 21, 1941.

Trial Examiner Lindner: By the way, Mr. Tillman, we have been looking at this. Do you have any objection to our looking at it?

Mr. Tillman: I have no objection.

Just for the clarity, I suppose I had better ask a couple [46] of questions here.

Q. (By Mr. Tillman): This initiation date that appears on the booklet of 1/21/41, to what does that have reference?

A. I don't know. The book was given to me in the office and there it is.

Q. Was this book given to you before you were discharged or afterwards?

A. I don't recollect that.

Q. This Cannery and Food Process Workers Union, did you join that before you were discharged? A. Yes.

Q. Did you know of such a union—let me ask you when was the first time that you knew of such a union?

A. That union was organized, to my knowledge, after the injunction took place against our old Local 22382.

(Testimony of Gus Cedar.)

Q. After what took place?

A. That injunction by the Teamsters.

Mr. Tobriner: I will have to ask that be stricken. As a matter of fact, when the witness talks about any injunction by the Teamsters he is giving his own conclusion which happens to be completely erroneous. I don't know what injunction he is referring to, but if Mr. Tillman refers to this we had better get the records.

Trial Examiner Lindner: I will sustain the objection and strike the witness' last answer. [47]

Q. (By Mr. Tillman): I had a prior question. I was asking you when you first heard of this Cannery and Food Process Workers Union. Can you identify the time by some other means besides an injunction? A. No.

Q. What month in what year did you first learn of this Union?

Mr. Tobriner: I object on the ground that we are wasting time.

A. I say that I first learned that——

Mr. Tobriner: Pardon me. The document speaks for itself, and unless Mr. Tillman is trying to go back prior to January 21, 1941, I submit the question is immaterial in so far as anything that happened prior to that date, I take it, is of no particular moment to us here.

Trial Examiner Lindner: I don't think it is. I think we should clear up for the record, however, when this witness first became a member of the Cannery and Food Process Workers Union.

(Testimony of Gus Cedar.)

Mr. Tobriner: I understood, Mr. Trial Examiner, he answered that by saying it showed in the book January 21, 1941.

Mr. Tillman: He did not answer.

Mr. Tobriner: I take it back. He said something about that. [48]

Mr. Tillman: He answered June 1945, before as when he first paid dues. Now I am trying to find out when he first learned of this union.

Q. (By Mr. Tillman): Can you tell us what month, what year that you learned that there was this other union besides Local 22382?

A. It was the month of June.

Q. What year?

A. 1945, the time that book was transferred.

Trial Examiner Lindner: Were you transferred directly from Local 22382 to this Cannery and Food Process Workers Union of America?

The Witness: That is correct, sir. Those stamps represent the dues I paid in 1945, including May 1945 that was paid in dues into Local 22382. Then I was transferred into this here Cannery Workers Union in June and started paying dues then, June 1945.

Trial Examiner Lindner: How did you learn of that Union in June 1945?

The Witness: How? Well, there was a meeting we had, and their affiliation was meant to be with the Seafarers Union.

Trial Examiner Lindner: You mean you had a meeting of Local 22382?

(Testimony of Gus Cedar.)

The Witness: Yes, and then it was understood it was [49] affiliation with the Seafarers Union, and for some reason which I can't explain, it didn't materialize and it finally swung into this here Cannery Workers Union. It all happened about the same time.

Trial Examiner Lindner: Without any affiliation with the Seafarers Union, is that right?

The Witness: Yes. You see, I was only a member of the Union, I had no official capacity at any time, I am not really in the know of what took place.

Mr. Tillman: I think that is all I have.

Trial Examiner Lindner: We will stake a short recess at this time.

(Whereupon a short recess was taken.)

Trial Examiner Lindner: The hearing is in session. Do you have any further questions of this witness?

Mr. Tillman: No questions.

Trial Examiner Lindner: Cross-examination.

#### Cross-Examination

By Mr. Agee:

Q. Mr. Cedar, you became a member of 22382 in the year 1940, is that correct?

A. That's correct.

Q. That was a union affiliated with AFL?

A. So I understand it was.

(Testimony of Gus Cedar.)

Q. You continued to be a member of that union and were a member of that union in 1944 when you first went to work for [50] the Capolino Company?

A. That's right.

Q. As far as you know at that time were all of the other employees of the company members of 22382?

A. As far as I know, yes.

Q. You remember, don't you, that in the spring of 1945 about the month of March, 1945, you first learned that there was a claim being made that the Teamsters were asserting jurisdiction over workers such as yourself, did you not?

A. That was the rumors.

Q. From then on the conflict in the Capolino Company among the battling unions, so to speak, was between Local 22382 and the Teamsters, was it not?

A. That's right.

Q. In other words, there was no CIO Union that was in there active and claiming representation?

A. No, sir.

Q. Commencing in March of 1945 and right down until you were informed by the Company that they had signed a contract with the Teamsters, there was a great deal of discussion among yourself and the other employees in the plant about this conflict between the two unions, was there not?

A. Between the Teamsters and Local 22382, yes, there was. I wouldn't say conflict, because everybody was against the [51] Teamsters.

Q. It eventually resulted, before you left the employ of the company, that some of the members had signed up with the Teamsters?



(Testimony of Gus Cedar.)

A. You will bear in mind that I didn't leave, I was fired.

Q. Well, you were fired, or your employment terminated. You knew that a number of the employees there at the company had signed up with the Teamsters? A. Yes.

Q. You kept saying all the time when you were questioned about what you were going to do, you kept saying you were undecided, is that right?

A. Yes, I was undecided.

Q. As a matter of fact, when you joined this Cannery & Food Process Workers Union of Modesto Area, you had made up your mind at that time, had you not, that you were not going to join the Teamsters? A. That's right.

Q. So that you continued on in the employment of the company and continued to state that you were still undecided, is that true?

A. And still undecided as to the Teamsters.

Q. As a matter of fact, during the month of June and up until the time your employment was terminated you were not undecided, you had already decided, had you not, to not [52] join the Teamsters Union?

A. Yes, under the present setup.

Q. Don't you recall an occasion either in the latter part of April or the first part of May 1945 when Mr. Capolino called you and all of the other employees together in the plant?

A. Yes, that's right.

(Testimony of Gus Cedar.)

Q. At that time there were no outsiders present, were there? A. There were no what?

Q. Outsiders present, nobody there except just Mr. Capolino and you and other employees of the company? A. That's right.

Q. By "outsiders," I mean organizers from any union or anything of that sort? A. No.

Q. Is it not a fact at that time Mr. Capolino said to you and these other workers in substance, "Men, I don't care who you join up with, I don't care if you join up with the devil himself, but I am trying to keep this plant open and in operation and you have to join up with somebody?"

A. That wouldn't be the correct substance of what he said, if I got it right. He said, "There is nothing else we can do," he said, "but to go with the Teamsters. If we don't they will stop delivery and we will all be out of work." [53]

Q. And he said something to the effect he wanted to keep the plant in operation and keep it going, isn't that true? A. That's right.

Q. Do you recall his making a statement along this line: "I don't care if you men join up with the devil himself?" A. No, I don't recall.

Q. You don't recall his using that expression?

A. No.

Q. About when was it that you were first told by the company that the company had signed up a contract with the Teamsters Union on May 18, 1945?

A. They never did tell me that directly.

(Testimony of Gus Cedar.)

Q. Did you get it indirectly?

A. Not in another manner except I heard through the other employees that the company had signed up with the Teamsters, had a contract signed up. But the company never told me directly nor did I ever see a contract.

Q. You yourself never had any dues deducted for payment by the company to the Teamsters, did you?

A. No, sir.

Q. When you had had dues deducted from your pay to be paid by the company to 22382, that was done with your voluntary authorization and consent, was it not?

A. That was decided on by the union.

Q. I mean, that was done with your consent?

A. It was.

Q. You were one of the employees that wanted to remain with Local 22382, is that correct?

A. That's right.

Q. You were one of the employees that wanted that union to be the bargaining agent to represent the workers with the company?

A. That's right.

Q. Up until the company signed this contract with the Teamsters on May 18, 1945, and I am repeating a little now, you say that all of the employees there in the company were members of 22382?

A. They were.

Q. And it was a requirement that all of the employees not only be members of 22382 but that they

(Testimony of Gus Cedar.)

remain in good standing with that union in order to remain employed there, isn't that correct?

A. I don't know that.

Q. Do you know of any employees there at the plant prior to—that is, I mean before the company signed up with the Teamsters on May 18, 1945, who were not members of 22382?

A. No, I don't know.

Q. Do you know of any employees of the company in that period who did not remain in good standing in 22382?

A. No, I don't know. [55]

Q. So far then as you know, all of the employees up to May 18, 1945, were required to be members of 22382 and remain in good standing with that union?

A. Well, I couldn't possibly answer that in the affirmative because I was only a member, I have very little knowledge of the union itself, being no official of it, not even on the Council. So you see, there is a lot of things in the union I don't know.

Q. We are just asking for your knowledge. There were about 26 regular employees, were there not, at the plant?

A. I never counted them.

Q. Is that approximately right?

A. I guess that's right.

Q. That is, you classed yourself as a regular employee?

A. Yes.

Q. Then, as I get the situation. Mr. Cedar, you were willing to go along with 22382 as long as the company recognized that union as the bargaining

(Testimony of Gus Cedar.)

agent, and you were willing to remain and keep your good standing in that union?           A. Yes.

Q. Then when the company signed up a contract with the Teamsters you were unwilling to go along with the Teamsters and become a member in good standing with the Teamsters?

A. That's right.

Q. Was that your position irrespective of whether a majority [56] of the employees there at the plant signed up in writing with the Teamsters?

Mr. Tillman: I will object to that question.

A. I never give that——

Trial Examiner Lindner: Just a minute.

Mr. Tillman: It is immaterial, irrelevant.

Trial Examiner Lindner: I will sustain the objection.

Q. (By Mr. Agee): Did any of the fellow employees there at the company come to you and ask you or suggest to you that you ought to join up with the Teamsters?           A. Yes.

Q. Can you name any of those employees who did that?

A. Well, the suggestion was made by Mr. McIsaac, if you want to call him an employee.

Q. Any other employees?

A. Well, I think that Mr. Stewart made the same suggestion to me.

Q. I am not talking about anybody except employees that were in the same sort of a situation that you were, in other words, just working there without anybody under them. Let us just talk about

(Testimony of Gus Cedar.)

those employees. You knew some of those employees had signed up with the Teamsters, didn't you?

A. I did.

Q. Didn't some of those employees come to you and ask you [57] to join up and join them in the Teamsters?

A. Not to my recollection.

Q. Do you know Mr. Dutton?

A. Yes.

Q. What was his job or position there with the company?

A. Mechanic.

Q. Did he have anybody under him?

A. Not to my knowledge.

Q. In other words, he was just an employee with no more authority than you have, is that right?

A. I guess that is just about right.

Q. Did Mr. Dutton come to you and discuss this thing with you?

A. Discussed it, yes, but I don't recollect ever asking me to join the Teamsters.

Q. While you were there in the plant and after you had joined up with this other union on—you say you joined this other union June 2, 1945?

A. You understand that that was a mass transfer from Local 22382 into this union. I haven't got the date of it except you can see that the date stamped in the book here as evidence.

Q. Before your employment was terminated on June 22, 1945, did you ask or urge any of the workers there in the plant not to join up with the Teamsters? [58]

Mr. Tillman: I object to that as immaterial.

Mr. Agee: It would show bias.

(Testimony of Gus Cedar.)

Mr. Tillman: His bias is immaterial.

Mr. Agee: It goes to the weight of his testimony.

Trial Examiner Lindner: I will overrule the objection. You may answer.

The Witness: Repeat the question, please.

Trial Examiner Lindner: Read the question, please.

(The question was read by the reporter.)

A. I made it plain to them that I took an independent stand and I didn't care what others done.

Trial Examiner Lindner: You made it plain to the employees that you talked with——

The Witness: To the employees, yes.

Q. (By Mr. Agee): In other words, no matter what they did you were not going to go along with the majority, is that right?

A. Not going to go along with the Teamsters.

Mr. Agee: All right, that is all.

Q. (By Mr. Tobriner): Mr. Cedar, you say you attended meetings of Local 22382, some of them held at Merced. During the course of those meetings is it not a fact that it was stated that the jurisdiction formerly exercised by 22382 had been assigned by the American Federation of Labor to the Teamsters? A. No, sir. [59]

Q. You never heard anybody say that?

A. No, sir.

Q. You never were told that by Mr. King in his statements to the press that you mentioned?

A. Mr. King was not present at any meetings in Merced.

(Testimony of Gus Cedar.)

Q. I am asking now at the time Mr. King came to the plant and Mr. Torreano and Mr. Brown at those various meetings that you have mentioned, and you say that they discussed this problem, during the course of the discussion and the argument don't you remember their ever saying at that time the American Federation of Labor had assigned jurisdiction or given jurisdiction or put the Teamsters in at this plant? Do you ever remember that?

A. There was no discussion, but somebody questioned Mr. King who he was working for because he was our Secretary-Treasurer, 22382 just shortly before, so he had identified himself to the extent of saying "I am now working for the Teamsters."

Q. Didn't he ever tell you—strike that.

You knew 22382 was a Local in the American Federation of Labor? A. Yes.

Q. You knew it was the so-called Federal Union, did you not?

A. I haven't got that altogether clear. [60]

Q. It was in the AFL? A. It was.

Q. You saw the newspapers and you heard the statements made by King and Brown and by Torreano and you knew what was going on generally, didn't you, in this whole picture?

A. Well, in reading the newspapers, as I say, I will say this: I don't always believe what I read in the newspapers.

Q. Hadn't you ever heard or hadn't it been told you that the AFL had decided the jurisdiction over the cannery workers at Capolino should go to the Teamsters?



(Testimony of Gus Cedar.)

A. Well, just like I said before, reading the newspapers and listening to everybody talking, nobody else but a fool would believe everything you hear.

Q. That's right, but didn't you hear King, Brown, or Torreano at some time during this period say that the AFL had said the Teamsters should take over for 22382?

A. I don't recollect that.

Q. You wouldn't say that it had not been said?

A. I talked very little to King or Torreano.

Q. But you have mentioned you went to four meetings at which this whole matter was discussed. I am asking you whether during all those four discussions whether anybody at any time ever said that the AFL had assigned jurisdiction or given jurisdiction to, or read that the Teamsters [61] should have jurisdiction over these workers?

A. There was a meeting held in Modesto and I think Mr. Tomson brought the question up when he came back from New Orleans.

Q. Didn't he go to New Orleans——

A. Beg your pardon?

Q. As a matter of fact, didn't Mr. Tomson go to New Orleans about this very matter?

A. I don't think so, not that I know.

Q. Didn't Mr. Tomson, when he came back, say that the Executive Council of the AFL had decided that the Teamsters should have jurisdiction?

A. No, sir.

(Testimony of Gus Cedar.)

Q. He didn't tell you that?

A. He said that a Mr. Beck had demanded that we go in with the Teamsters Union.

Trial Examiner Lindner: When was this?

The Witness: I couldn't fix the date, but that was some time—if you could tell me when Mr. Tomson came back from New Orleans—after that meeting they held at 1945, then I could tell you when it took place, but it must have been some time around March.

Mr. Tobriner: That's right.

Trial Examiner Lindner: That is the best of your recollection? [62]

The Witness: That is the best of my recollection.

Trial Examiner Lindner: When Mr. Tomson addressed a meeting of Local 22382 in Modesto, is that correct?

The Witness: Yes, that's correct. And the balance of the meeting ended up in a row between Mr. King and Mr. Tomson.

Q. (By Mr. Tobriner): At some time during this period you joined another organization, is that right?

A. Would you specify which one?

Q. Cannery and Food Process Workers Union of Modesto Area.

A. Yes, we were taken over, there was mass transfer, so we were all taken in to that new organization.

Q. You mention a mass transfer. That was not a mass transfer decided by the AFL, was it?

A. I don't know.

(Testimony of Gus Cedar.)

Q. You don't know what mass transfer that was, do you?      A. I don't know.

Q. When did you yourself join this Cannery and Food Process Workers of Modesto Area?

A. When all the rest were transferred into it and I received the book here.

Q. May I see the book?

A. Yes. (Handing document to counsel.)

Mr. Tobriner: May we mark this for identification for the Teamsters, party to the contract? [63]

Trial Examiner Lindner: Will you have copies made of it?

Mr. Tobriner: If I may have this temporarily, I will have copies made.

Trial Examiner Lindner: With your permission, Mr. Witness, may Mr. Tobriner have that dues book temporarily?

Mr. Tillman: I was going to say, of course I will object to its offer eventually when you do offer it. Do you just want to mark it for identification?

Mr. Tobriner: At the present time.

I will mark for identification the book entitled "Cannery and Food Process Workers Union of Modesto Area" with a stamp on it "SIU," and then with the circle marked "Cannery and Food Process Workers Council of Pacific Coast," and ask that that be marked for identification Exhibit No. 1 on behalf of International Brotherhood of Teamsters.

(Testimony of Gus Cedar.)

Trial Examiner Lindner: That will be Teamsters' Exhibit No. 1.

(Thereupon the document above referred to was marked Teamsters' Exhibit No. 1 for identification.)

Q. (By Mr. Tobriner): This book as I show you, Mr. Cedar, shows that dues were paid in January, 1945, is that right, to this organization?

A. To which organization? [64]

Q. To the one that the book states.

A. No, these dues were paid into the old Local 22382 Modesto, and they were paid up inclusive of May, 1945. This is the transfer from the old 22382 book, you see, into this one showing that I was paid up in the old Local. That is the meaning of it.

Q. When were you initiated into this union, Cannery and Food Process Workers Union of Modesto Area?

A. I don't think there was initiation. It was just like I said, transferred over.

Q. Did you ever go to any meeting when a transfer was made of the membership of 22382 to Cannery and Food Process Workers Union?

A. I don't recollect it.

Q. There wasn't any meeting where a vote was taken by the members of 22382 to go into this union?

A. I don't believe I was present.

Q. Did Tomson give you this book?

A. No, that book was given to me by the Secretary, Jennie Quistini.

(Testimony of Gus Cedar.)

Q. She gave you this book?

A. She gave me this book.

Q. You paid dues to her, is that right?

A. I paid dues to her, right.

Q. You knew that Jennie Quistini was Secretary of Cannery [65] and Food Process Workers Union of Modesto Area, or an official of it?

A. She was not Secretary at that time.

Q. What was she?

A. She was clerk, I would call it. Mr. Tomson was still Secretary at that time.

Q. You knew at that time that 22382 of the AFL had another official as Secretary, did you not? Didn't you know that 22382 had other officials, that 22382 was in the hands of a man Dan Flanagan from the AFL?

A. Not to my knowledge.

Q. You didn't know 22382 was in receivership or trusteeship for the AFL and that Dan Flanagan was the trustee? You didn't know that?

A. They never informed me about it.

Q. You thought that this Cannery and Food Process Workers Union was 22382?

A. No.

Mr. Tillman: I object.

Trial Examiner Lindner: You object, Mr. Tillman?

Mr. Tillman: On the ground that the testimony is clear already as to what the witness meant by that book.

Trial Examiner Lindner: I will sustain the objection.

(Testimony of Gus Cedar.)

Q. (By Mr. Tobriner): When you paid dues to this Cannery and Food Process Workers Union of Modesto Area you knew, [66] did you not, that this was not Local 22382?

A. That much I knew when I paid dues the month of June. I knew then that we had been transferred in this Cannery Workers Union.

Q. 22382? A. No, transferred from.

Q. From 22382 to this? A. That's right.

Q. At that time didn't you know that Scientific Nutrition Company had a contract with 22382?

A. How would I know?

Trial Examiner Lindner: What time are you referring to?

Mr. Tobriner: The time he mentioned, June, 1945.

Q. (By Mr. Tobriner): At any time did you know Scientific Nutrition Company had a contract with 22382?

A. Yes, in 1944 we knew we had it. In 1945 we knew it discontinued the checkoff system. From there on I don't know what they had because, like I said, I was only a member of the union. I was in no position to know what they had.

Q. But you did pay these dues into this union, Cannery and Food Process Workers Union?

A. From June, yes.

Q. Did you know that this Cannery and Food Process Workers Union withdrew from SIU after that time some time in July? A. SIU? [67]

Q. Seafarers' International Union?

(Testimony of Gus Cedar.)

A. Yes, I know what you mean, but I understand it didn't materialize. They were trying to affiliate but didn't make the grade.

Q. Never did affiliate with SIU?

A. That is what I heard, not that I know.

Q. Did you ever tell any officials of Cannery and Food Process Workers Union or Seafarers' International Union, or make a claim that you had suffered any discrimination by this employer, did you yourself ever make any charge to this National Labor Relations Board or its officers as to any discrimination suffered by you from the employer?

A. I don't understand the wording of your statement.

Q. Did you ever complain to any official of the National Labor Relations Board that the employer had treated you unfairly, that Scientific Nutrition Company had treated you unfairly?

A. This discharge was given me by the company. I handed it in to the union.

Q. To which union?           A. This union.

Q. Seafarers' International Union?

A. Not Seafarers. Whatever that is.

Q. Cannery and Food Process Workers?

A. Yes, it was handed in their office. [68]

Q. You never handed any such charge or complaint to any other union, did you?

A. No, sir.

Mr. Tillman: I will be willing to stipulate that we have a charge filed by the Cannery and Food Process Workers Union of Modesto Area.

(Testimony of Gus Cedar.)

Mr. Tobriner: I am not interested in your stipulation, Mr. Tillman.

Q. (By Mr. Tobriner): After this occurred, this trouble in June of 1945, an election took place, did it not?      A. Which election?

Q. An election among the unions took place?

A. That was later, wasn't it?

Q. After June, 1945?      A. Yes.

Q. Do you know whether or not the Cannery and Food Process Workers Union was on the ballot for that election?      A. I believe it was.

Q. Did you make any request that that union object to the election because of any of these practices that you have mentioned here this morning?

A. No.

Q. You did not?      A. No.

Q. The election was held, was it not? [69]

A. The election was held.

Q. Did you ever go back to the employer and ask for this job after the June 22nd date?

A. No, sir.

Q. You never returned?

A. Never returned.

Q. You are no longer a member of this Cannery and Food Process Workers Union, are you?

A. That discontinued.

Q. That discontinued?

A. As far as I am concerned.

Q. September or October some time?

A. Whatever date is there.

Q. There is no such union in existence now, is there?      A. I couldn't prove it.



(Testimony of Gus Cedar.)

Trial Examiner Lindner: So far as you know there isn't any such union?

The Witness: No.

Q. (By Mr. Tobriner): You haven't been notified of any meeting?

A. That is locally. They may operate some other place.

Q. Have you been notified of any meeting of Cannery and Food Process Workers, Modesto Area?

A. No, sir.

Q. You haven't paid dues into it? [70]

A. Since——

Q. Since August, 1945? A. That's right.

Q. You don't know any officials who purport to act for it? A. No, sir.

Q. I see this card is signed by R. M. Tomson on behalf of Cannery and Food Process Workers Union of Modesto Area. Do you know where Mr. Tomson is now or what he is doing?

Mr. Tillman: I object to that as immaterial and irrelevant.

Trial Examiner Lindner: Sustained.

Mr. Tobriner: I want to show this organization is out of existence, unless counsel will stipulate to it. Here is the Secretary-Treasurer, I want to know what happened to him.

Trial Examiner Lindner: The witness already testified so far as he knows the Cannery and Food Process Workers Union of Modesto Area is not in existence at this time.

Q. (By Mr. Tobriner): So far as you know it

(Testimony of Gus Cedar.)

was not in existence after August, 1945, on the last date you have shown to pay any dues?

A. I won't fix the date, but that is the date whatever is stamped, that is the last time I paid dues into that particular union.

Q. You have had nothing to do with it since then? [71]           A. No.

Q. These markings here showing payments for January, February, March, April and May of '45 are dues that were paid by you into 22382?

A. Correct, sir.

Q. After that time is it correct now that you thought in paying these subsequent dues you were carrying on with the organization that had succeeded to 22382?

A. Can anyone answer that question? I can't.

Trial Examiner Lindner: Do you understand the question?

The Witness: I understand the question, but I don't understand what answer you could give to it.

Q. (By Mr. Tobriner): You knew, did you not, that this was a different organization than 22382, this Cannery and Food Process Workers Union. Maybe that will get to it.

A. My comprehension of that thing, it would be like that was trying to carry on the old 22382 and still trying to make something out of it. That is the best answer I can give you.

Q. You knew 22382 had never been affiliated with the Seafarers' International Union. You knew that?           A. They never did make it.

Q. Never were?

(Testimony of Gus Cedar.)

A. It tried but it never made it. [72]

Q. You didn't know, did you, that Cannery and Food Process Workers Union of Modesto Area got out of the AFL? A. I didn't know that.

Mr. Tobriner: I have no further questions.

By the way, I am going to ask that this be our Exhibit 1.

Trial Examiner Lindner: You offer that now?

Mr. Tobriner: Yes.

Trial Examiner Lindner: Will you have copies made?

Mr. Tobriner: I will have photostatic copies made, if I may have it, and return it to Mr. Tillman.

Mr. Tillman: Let the record show that I object to the offer as immaterial and irrelevant and already covered by the testimony.

Trial Examiner Lindner: Are there any other objections? Do you have an objection, Mr. Agee?

Mr. Agee: No objection.

Trial Examiner Lindner: Mr. Horie?

Mr. Horie: No objection.

Trial Examiner Lindner: I will overrule the objection and receive Teamsters Exhibit No. 1 in evidence, with the proviso that Mr. Tobriner can withdraw it to substitute photostatic copies in lieu of the original. Will you, Mr. Tobriner, return that card to Mr. Tillman so that he can return it to the witness, please? [73]

Mr. Tobriner: Yes.

(The document heretofore marked 'Teamsters' Exhibit No. 1 for identification was received in evidence.)



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(Testimony of Gus Cedar.)

Mr. Tillman: I have just one or two questions.

Redirect Examination

By Mr. Tillman:

Q. Mr. Cedar, you mentioned that at a meeting in March when Mr. Tomson came back from New Orleans, he made an announcement and the balance of the meeting ended up in a row between King and Tomson. What was the row about?

A. I don't know excepting it must have been about the job itself.

Trial Examiner Lindner: Just a moment, the witness answered, Mr. Tillman, that he didn't know. We don't want any of his thoughts.

Q. (By Mr. Tillman): Were you present at the meeting? A. I was.

Q. You don't know what the row was about?

A. I was told it was about the——

Mr. Agee: Just a minute.

Trial Examiner Lindner: Did you hear any part of the row that took place between these two men mentioned?

The Witness: No, sir.

Trial Examiner Lindner: You did not?

The Witness: No. [74]

Trial Examiner Lindner: Do you know of your own knowledge what the row was about?

The Witness: No.

Trial Examiner Lindner: Proceed.

Q. (By Mr. Tillman): Referring to this little booklet which has gone into evidence as 'Teamsters'

(Testimony of Gus Cedar.)

Exhibit No. 1 and shows stamped on there "Paid" for January, February, March, April, May 1945, as I understand your testimony you were given credit by the Cannery and Food Process Workers Union of Modesto for those months which you had paid dues into Local 22382?      A. Correct.

Q. Did Jennie Quistini, did she ever succeed Mr. Tomson as Secretary of the Cannery and Food Process Workers Union?      A. She did.

Q. Was she the last Secretary they had as far as you know?      A. She was.

Mr. Tillman: No other questions.

Trial Examiner Lindner: Mr. Agee?

Mr. Agee: I have nothing further.

Trial Examiner Lindner: Mr. Tobriner?

Mr. Tobriner: No further questions.

Trial Examiner Lindner: Do you have any questions, Mr. Horie?

Mr. Horie: No questions. [75]

Q. (By Trial Examiner Lindner): Mr. Cedar, were all four meetings that you testified about which were held on the property of the plant, were they during the regular working hours of the day?

A. Yes, sir.

Q. Were they during your lunch period?

A. No.

Q. Were you paid for attending those meetings?

A. Yes, sir.

Q. You didn't lose any salary for having attended those meetings?      A. No, sir.

Q. I would like to clear up the record on what



(Testimony of Gus Cedar.)

you testified to about a mass transfer from Local 22382 to the Cannery and Food Process Workers Union of Modesto Area. Was there a meeting held of the employees of the Capolino Packing Corporation at which time they signified that they were going to transfer from 22382 to the Cannery and Food Process Workers Union of Modesto?

A. Not to my knowledge.

Q. In other words, so far as you know you were a member of Local 22382 at the time you became employed by the company?

A. Yes.

Q. Until June, 1945, when you received the card in evidence [76] as Teamsters' Exhibit 1, at which time you became aware that there was a mass transfer from 22382 to the Cannery and Food Process Workers of Modesto, is that correct?

A. I don't know if I was ever notified directly, but I came up to the office and they took my book and they said "We will have to give you a new book."

Q. The office that you went up to, was that an office of Local 22382?

A. No, that was an office of the Cannery Workers Union which that book represents.

Q. I know that, but when you went up to the office in or about June, 1945, did you go up to the office of Local 22382?

A. No.

Q. Did you go up to the office of the Cannery and Food Process Workers Union of Modesto?

A. Yes.

(Testimony of Gus Cedar.)

Q. How did you know to go up there? Were you a member of that union?

A. During that time I had handed in my complaint about being discharged and I contacted our steward in Turlock and he said our new office was now the same address as that address that was on there.

Q. Mr. Witness, I think that you are probably a little confused about the dates. You were discharged on June 22, 1945? A. Yes.

Q. According to the dues book and according to your testimony you started paying dues to the Cannery and Food Process Workers Union of Modesto about June 2, 1945? A. Yes.

Q. So that you could not very well have given them a complaint about your discharge at the time you paid the dues?

Mr. Tillman: Mr. Examiner, if I might interrupt, I think it is 7/2/45 which would be July.

Trial Examiner Lindner: If I am mistaken I would like to correct it.

That is correct, Teamsters' Exhibit No. 1, Miss Reporter, indicates that in writing, dues were paid 7/2/45.

Q. (By Trial Examiner Lindner): Was it at that time, Mr. Cedar, that you gave this Cannery and Food Process Workers Union of Modesto Area your complaint about having been discharged?

A. No, my complaint was handed about a few days after, and at that time to my knowledge it was still 22382 with your office. I handed it in to our President.

(Testimony of Gus Cedar.)

Q. How many men were employed in the boiler room with you, Mr. Cedar?

A. At that time there was one regular man and then we had two other men helping out, so we were four, altogether. But at that time I was discharged, there were only two of us [78] in there.

Q. Only two at the time you were discharged?

A. Yes.

Q. Did you see or did you hear either Mr. King, Mr. Brown or Mr. Torreano solicit the other employee of the boiler room to join the Teamsters?

A. No, I didn't see it personally because when the meeting was over I rushed out of the warehouse.

Q. Did they come down to the boiler room and ask you to join the Teamsters?

A. No, Mr. Torreano contacted me in what we call the "Black Shop."

Q. Blacksmith shop?

A. Yes, what we called the "Black Shop" or machine shop, and Mr. King contacted me in the warehouse.

Q. Did you see them at any time contact any of the other employees?

A. Yes, at the first meeting that the Teamsters had they interviewed, I guess everybody. But like I said before, I didn't linger very long in the warehouse. I walked out.

Q. Did you hear what they said?

A. No, sir.

Trial Examiner Lindner: I have no further questions.

(Testimony of Gus Cedar.)

Recross-Examination

By Mr. Tobriner:

Q. Mr. Cedar, where did you pay these [79] dues for, let us say, March of 1945? How did you pay them? A. Shop steward.

Q. And April? A. Shop steward.

Q. May? A. Shop steward.

Q. June?

A. Paid that in the office of that particular union there.

Q. In June was that during the month of June?

A. That the dues were paid?

Q. Yes.

A. I am not sure of the date or the month, but it must have been the latter part of June.

Q. You went there in the latter part of June before you were discharged? A. After.

Q. After you were discharged? A. Yes.

Q. You went to which union? There were two unions, were there not, 22382 and this Cannery and Food Process Workers Union. You knew that, didn't you? A. Yes.

Q. Which one did you go to?

A. Cannery and Food Process Workers Union and paid those first dues which you see marked in that book. [80]

Q. You paid there?

A. Yes, and he took my old book, and like I said, stamped the dues I paid for the previous months, stamped it in and then wrote in.

(Testimony of Gus Cedar.)

Q. Previous to that time hadn't there been meetings of this Cannery and Food Process Workers Union?      A. Yes, but I hadn't attended.

Q. You had not?

A. No, because we were supposed to have our meetings in Merced and I think they had two meetings as far as I recollect and I attended one of them.

Q. You did attend one meeting?      A. Yes.

Q. Of the Cannery and Food Process Workers Union?      A. Yes, but that was before June.

Q. Before June?

A. Oh, yes, I think it was probably the month of April or so.

Q. Did you have any card or anything to show that you were a member of the union besides this?

A. No, sir.

Q. Did you have any other document or other kind of evidence as to which union you belonged to?

A. No, sir.

Q. Did you tell Mr. Tomson or Miss Quistini that you considered yourself a member of Cannery and Food Process Workers [81] Union or of their union prior to June?      A. No.

Q. You did not?

A. There is no answer to that. They never asked me about it.

Q. These discussions that you had at the plant to say whether you were a member of Cannery and Food Process Workers Union or 22382—

A. The discussion went no farther than that I refused or they refused to sign with the Teamsters. That is as far as the discussion went.

(Testimony of Gus Cedar.)

Q. You didn't attend the meetings of 22382 then, did you?      A. When?

Q. During this time, May, June, July, or even before that, March, April, May, June?

A. I was at one or two meetings.

Q. Not all of the meetings?      A. No, sir.

Q. So you don't know what went on at the meetings, of course, that you were not at?      A. No.

Mr. Tobriner: Thank you.

Mr. Tillman: The record is still not clear as to whether or not this Cannery and Food Process Workers Union was in existence prior to the witness' discharge. I would like a [82] statement from the parties that we have a charge in the record, and if the parties won't stipulate this charge was filed by this particular union May 19, 1945, I will offer the charge in evidence.

Mr. Tobriner: Our position is that you served us with certain papers, and so that the record will be perfectly clear, the only charge I have ever seen is the third amended charge. If there are prior charges signed by other parties with different material in them, I would now object to any such change in this case.

Mr. Tillman: Perhaps you misunderstand my position. The complaint in this proceeding is based upon the third amended charge filed by the FTA-CIO that you have a copy of. I don't offer this in any way changing the pleadings, but merely to show that the Cannery and Food Process Workers Union of Modesto Area was in existence in May of 1945

(Testimony of Gus Cedar.)

to the extent that they were able to file charges with the Board.

Mr. Tobriner: I have absolutely no way of knowing if that is the fact; and secondly, if it is the fact, I don't see its materiality. We are here in answer to a third amended charge filed by the FTA-CIO by its attorney which narrates certain information. It is obvious, our position is, from what has been disclosed by this witness on the ground alone of what has been adduced, that this charge [83] would not stand up. This witness is not a member of FTA-CIO. The only organization of which he is a member he has already testified.

Trial Examiner Lindner: Just a minute, there has been no testimony whatsoever, so far as I can recall, that this witness either testified that he was or was not a member of the FTA-CIO.

Mr. Tobriner: Well, I will ask him just to make sure. I understood he said FTA-CIO isn't active at this time.

Q. (By Mr. Tobriner): You have never been a member of the FTA-CIO?

A. I have, from the time——

Mr. Tobriner: I will rephrase the question.

Mr. Tillman: I submit he was answering the question.

Q. (By Mr. Tobriner): Were you a member of the Food, Tobacco and Agricultural and Allied Workers Union of America, CIO in the month of January, 1945?

A. January, 1945?

(Testimony of Gus Cedar.)

Q. January, 1945.           A. I was not.

Q. February, 1945?       A. I was not.

Q. March, 1945?       A. I was not.

Q. April, 1945?       A. I was not.

Q. May, 1945?       A. I was not.

Q. June, 1945?

A. June, I became a member of that—

Q. Cannery and Food Process Workers?

A. That's right.

Q. July, 1945, of the Food, Tobacco and Agricultural Workers?       A. No.

Q. August, 1945?       A. Which is the last?

Q. That is the last.

A. In September I became a member of FTA.

Q. In September, FTA. It was not at any time when these alleged actions of management in discharging you in June, July or August occurred—I mean June—strike that.

You were not a member of FTA-CIO in the month of June, 1945 when you, claim you were discharged?       A. No, sir.

Mr. Tillman: I am still under the impression that you misunderstood my statement of this other charge. If there is some question in your mind, as there seems to be from the questions you have been directing to the witness, I merely want to establish that the Cannery and Food Process Workers Union was in existence before the date which Mr. [85] Cedar first paid dues in that little booklet, Exhibit No. 1. If you are going to argue from that booklet that the organization didn't come into existence



(Testimony of Gus Cedar.)

until after his discharge, then I will ask for your statement as to this charge I am going to offer.

Trial Examiner Lindner: Is that your position, Mr. Tobriner?

Mr. Tobriner: I didn't follow Mr. Tillman.

Trial Examiner Lindner: Is it your position the Cannery and Food Process Workers Union of Modesto Area was not in being until after the discharge of this witness, or was it an organization so far as you know, a labor organization prior to that time?

Mr. Tobriner: Frankly, I am not sure what Cannery and Food Process Workers Union was in June, 1945. I don't know their status. I know there was a group of people who talked about the Cannery and Food Process Workers Union. Whether it was this organization affiliated with SIU, I don't know.

Trial Examiner Lindner: Are you taking the negative position that it was not an organization at that time, a labor organization?

Mr. Tobriner: I am taking this position surely: First that it is not an organization now.

Trial Examiner Lindner: You mean as of the date of this hearing? [86]

Mr. Tobriner: Yes. As to the charge Mr. Tillman is talking about, I have never even seen it. I have no idea when it was filed.

Mr. Tillman: I offered to show it to you, and if you will stipulate on the date it was signed by Mr. Tomson who prepared it, it has his signature——

(Testimony of Gus Cedar.)

Trial Examiner Lindner: We will take a short recess at this time.

(Whereupon a short recess was taken.)

Trial Examiner Lindner: The hearing is in session.

Mr. Agee: I am willing to stipulate that on or about May 19, 1945, there was filed with the Board a charge by an organization, or entity styling themselves as "Cannery and Food Process Workers Union of Modesto Area" and purporting to be signed by R. M. Tomson, Secretary-Treasurer, and with the further stipulation that this charge just referred to has nothing to do with the charge now being heard before the Board.

Mr. Tobriner: I will stipulate to that with the further stipulation that this charge was dropped. That is correct, is it not?

Mr. Tillman: Yes, it is not the basis of this proceeding.

Trial Examiner Lindner: It is not the basis of this proceeding, Mr. Tobriner?

Mr. Tobriner: No complaint was issued on this charge?

Mr. Tillman: No complaint.

Trial Examiner Lindner: In other words, the stipulation we now have on the record goes to the issue of whether or not the Cannery and Food Process Workers Union of Modesto Area was an organization in May, 1945, is that correct, gentlemen?

Mr. Agee: That is my understanding.

(Testimony of Gus Cedar.)

Trial Examiner Lindner: Is that so stipulated?

Mr. Tillman: Yes.

Trial Examiner Lindner: Are there any further questions of this witness?

Mr. Agee: No.

Trial Examiner Lindner: You are excused, Mr. Witness. Thank you.

(Witness excused.)

Trial Examiner Lindner: We will recess for lunch at this time until 2 o'clock.

(Thereupon, at 12:35 o'clock p.m., a recess was taken until 2 o'clock p.m.)

#### After Recess

(Whereupon the hearing was resumed, pursuant to the recess, at 2 o'clock p.m.)

Trial Examiner Lindner: The hearing is in session. Proceed, Mr. Tillman.

Mr. Tillman: I will read into the record a proposed stipulation:

“In the matter of Bercut-Richards Packing Company et al, Cases Nos. 20-R-1414 et al, the Board directed elections among certain canneries including the Atwater, California plant of the Respondent.

“On October 16, 1945 the election directed at the Atwater plant was conducted. Three unions appeared as choices on the ballot in that election; namely, Cannery and Food Process

Workers Union of Modesto Area, affiliated with Cannery and Food Process Workers Council of the Pacific Coast; California State Council of Cannery Unions, American Federation of Labor; and Food, Tobacco, Agricultural and Allied Workers Union of America, CIO.”

Is that agreeable?

Mr. Agee: I will so stipulate.

Mr. Tobriner: So stipulated.

Mr. Agee: May I add at this time so we don't have to go back and proffer it, we would like to read into the record that in the election held which has just been referred to, that the California State Council of Cannery Unions, AFL, received 35 votes; the FTA-CIO, 22 votes, and the Cannery and Food Process Workers of Modesto Area, none; and that there were no challenged ballots, no void ballots, and further, in reference, you will refer to the Supplemental Decision of the Board?

Mr. Tillman: I refer only to the original decision.

Mr. Agee: I had better hold back this other. Unless you object, I would like to read a part of the Supplemental Decision of the Board in that same case dated February 15, 1946.

Trial Examiner Lindner: I will take judicial notice of the Board's decision in that case.

Mr. Agee: Very well. I didn't know that.

Mr. Tillman: I was wondering during the lunch hour whether we should indicate the case number of this charge which was filed to which we have a

stipulation which is not the basis for this proceeding. It has a different case number.

Mr. Agee: I don't see any purpose in that.

Mr. Tillman: All right.

I have nothing further at this time. The Board will rest.

Mr. Agee: Will you take the stand, Mr. McIsaac?

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### EDWARD EUGENE McISAAC

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Agee:

Q. Will you state your full name please?

A. Edward Eugen McIsaac. [90]

Q. By whom are you employed?

A. I am employed by the Scientific Nutrition Corporation at Atwater, California.

Q. Under what name is that company doing business at Atwater?

A. Capolino Packing Corporation.

Q. What is your position with the company?

A. I am Plant Superintendent.

Q. Mr. McIsaac, prior to May 18, 1945, with what union did the company deal in regard to the labor relations between itself and its employees?

A. Cannery Workers Union 22382 affiliated with the American Federation of Labor.

(Testimony of Edward Eugene McIsaac.)

Q. Prior to May 18, 1945, was it a condition of employment that every employee be a member of that union and maintain good standing in that union?

Mr. Tillman: I object to that question on the ground that the contract would be the best evidence.

Mr. Agee: He knows what it was.

Trial Examiner Lindner: Do you have a contract?

Mr. Agee: There was no contract in writing, was there?

The Witness: We only had the Master Contract.

Q. (By Mr. Agee): You mean the so-called "Green Book Contract" which is the collective bargaining agreement of the California Processors and Growers, Inc., is that right? [91]

A. That's right.

Q. Is the company by whom you are employed a member of that organization?

A. We are not.

Q. Will you answer the question?

Trial Examiner Lindner: I will overrule the objection. You may answer.

A. The employees coming under that contract were required to maintain good standing in the Cannery Workers Union.

Q. (By Mr. Agee): Prior to May 18, 1945, were all of the employees of the company members in good standing so far as you know with 22382?

(Testimony of Edward Eugene McIsaac.)

A. Those members that come under the contract, they were. I might explain there are certain members, supervisors and so forth that were not required to belong to the union. All others were required to belong to the union.

Q. Let me amend my question.

Prior to May 18, 1945, were all of the employees of the company who were eligible to membership in the union members in good standing of 22382?

A. To the best of my knowledge they were.

Mr. Agee: Counsel, we are having brought here and it will be here in a few minutes, and if we don't produce it you can move to strike it out, what pertains to a letter from the Teamsters directed to the company advising them in [92] substance that they had been designated as the body to have jurisdiction. Mr. White is waiting for it to be brought in.

Mr. Tillman: I have a copy of that letter.

Mr. Agee: Could we see a copy of that?

(The document was handed to counsel.)

Q. (By Mr. Agee): Would you take a look at this letter and read it over carefully and tell me then whether in your opinion that is a copy of the letter which the company received on or about May 8, 1945?

Trial Examiner Lindner: Are you going to get the original of the letter?

Mr. Agee: Yes, that is coming now. He didn't bring it in this morning.

(Testimony of Edward Eugene McIsaac.)

Trial Examiner Lindner: Is it your intention to introduce it in evidence?

Mr. Agee: Yes.

Trial Examiner Lindner: Will you mark this as an exhibit for identification?

Mr. Agee: I ask that it be marked for identification as Respondent's 1.

(Thereupon the document above referred to was marked Respondent's Exhibit No. 1 for identification.)

Q. (By Mr. Agee): Does that appear to you to be a correct copy of the original letter received by your company?

A. (Examining document): It does. [93]

Mr. Agee: Counsel, may we agree in substance that that letter purports to advise the company of the action of the Executive Council of the American Federation of Labor? [94]

Trial Examiner Lindner: The letter will speak for itself.

Mr. Agee: I think that is more or less preliminary.

Q. (By Mr. Agee): Was that letter the first written notice of any kind that the company had received so far as you know, concerning the claim of the Teamsters that they now had jurisdiction over the workers employed in your plant?

A. To my knowledge, it was.

Q. Up until that time, that is, up until the receipt of that letter had there ever been any claim



(Testimony of Edward Eugene McIsaac.)

communicated to the company by any union other than 22382 that it represented the workers as the bargaining agent?      A. No, there hadn't.

Q. You were here this morning when Mr. Cedar testified, were you not?      A. I was.

Q. You heard his testimony?

A. I did.

Q. Referring to a meeting of the employees at which Mr. Capolino spoke to them which Mr. Cedar identified as taking place the latter part of April or the first of May, 1945, can you specify the date of that meeting more exactly than that?

A. That took place on a Monday morning. I believe it was the second Monday in May. [95]

Q. Was that before or after the receipt of a letter which was marked for identification as Respondent's 1?

A. It was after receipt of this letter. I believe it was the following Monday after receipt of this letter.

Q. Were you present at that session?

A. I was.

Q. Was there anybody there representing management other than yourself and Mr. Capolino?

A. There was present there my assistant, Mr. Stewart, Warehouseman Mr. Spafford, and Mr. White.

Q. Where in the plant did that meeting take place?

A. It took place in our warehouse, near the warehouse office.

(Testimony of Edward Eugene McIsaac.)

Q. At the time that that meeting took place was the plant engaged in processing any food?

A. We were not.

Q. Then at that time were there any employees on the premises of the plant other than regular employees?

A. Only regular employees.

Q. Did all of the regular employees attend this meeting?

A. They did.

Q. How many employees were employed by the plant at that time?

A. I believe there were twenty-six.

Q. Among those twenty-six employees was Mr. Cedar?

A. He was one of them. [96]

Q. Do you recall whether he was there on that occasion or not?

A. He was present at that meeting.

Q. Will you state the substance of what was said, reciting by whom it was said and any replies made by anyone else?

A. The talking was done entirely by Mr. Capolino who was Manager of the plant. He gave the substance of this letter that is referred to as Respondent's Exhibit 1 and asked the employees to get together and decide what union they would like to affiliate with, that he was afraid this was going to lead to a lot of trouble and possibly shut the plant down; that all he was primarily interested in was to keep the plant running, that he did not care who they affiliated with or joined; if they joined up with the devil it would be all right with

(Testimony of Edward Eugene McIsaac.)

him. All he wanted was peace amongst his employees and to operate the plant.

Q. Did he at the time he made the statements have the original letter of May 8, 1945 in his hand or any other piece of paper?

A. He had this letter in his hand. He didn't read it word for word, he merely referred to it.

Q. Did any of the employees make any reply or any statements in reply?

A. There was discussion by several employees. I just don't recall, but the general attitude was they wanted a little time [97] to think it over. That was, it wasn't the purpose of that meeting to tell them what they were going to join. The purpose was to tell them about the trouble for them to look into it and decide what they wanted to join.

Q. Had the relations between the company and the union 22382 up to that time been entirely harmonious?

A. As near as possible for management and unions to get together, yes. We had our little differences which I think you will always find between management and unions.

Q. Were there any subsequent gatherings or meetings of the employees there at the plant when you were either present or in a position where you could hear what was going on?

A. You said "subsequent"?

Q. Yes.

A. On this same Monday we had just called our employees together and talked to them when re-

(Testimony of Edward Eugene McIsaac.)

representatives of the Teamsters Union, Mr. Torreano, Mr. King, Mr. Brown and two others whose names I don't recall, I never saw them after that, called at the plant in regards to this letter.

Q. Do you know whether they were requested to come there by anyone?

A. They were not requested.

Mr. Agee: Has anyone got a 1945 calendar so we can fix the date of this Monday?

Trial Examiner Lindner: Do you have a calendar? [98]

The Witness: I have '46. The second Monday would fall on the 13th, so in '45 it would have to fall on the 12th, wouldn't it?

Q. (By Mr. Agee): What am I getting at is this: How long after the company received that letter of May 8th, 1945, did Mr. Capolino communicate its contents to the workers?

A. This letter was received in the mail on Saturday prior to this Monday. The plant was not operating, the men were not in the plant at that time, so we had no opportunity to communicate the contents of this letter until Monday.

Q. So far as you know did anyone in the company have any prior warning or notice that these four men from the Teamsters were going to show up there at the plant that Monday?

A. None whatsoever.

Q. You say however, that they did actually show up about two hours after Mr. Capolino had this discussion?

(Testimony of Edward Eugene McIsaac.)

A. I would say approximately two hours after.

Trial Examiner Lindner: What time would that be?

The Witness: We had the men together about 8:30 in the morning. They went to work at 8 and we got them together. I would say around 10 or 10:30 in the morning.

Q. (By Mr. Agee): Just tell us from your own knowledge what happened when these Teamsters arrived.

A. Well, they presented themselves to the main office and were escorted into Mr. Capolino's office. He sent word out [99] in the plant for me to come up there. At that time they wanted to know what we intended to do about this. We informed them that until our workers in the plant so designated that they wanted the Teamsters to represent them, that we weren't going to do anything, that it was entirely up to our workers whom they wanted to choose.

They then asked if it would be all right if they could talk to our employees, and we told them it would be all right with us.

Q. Did they then leave the office?

A. No, I went out to the plant and passed the word amongst the workers for them to meet back in the warehouse, at which time I informed them that there were representatives of the Teamsters Union who would like to talk to them, but it was entirely up to them whether they wanted to listen to it. Whatever they wanted to do was entirely

(Testimony of Edward Eugene McIsaac.)

up to them. They could feel free to stay and listen to it or go on back to their work. It wasn't necessary for them to take any action, do anything, merely listen.

Q. Did you see or observe the employees gather in a group?           A. I did.

Q. Where in the plant did they gather?

A. In the warehouse at the same place we had the other meeting.

Q. Were the Teamsters present? [100]

A. The five members of the Teamsters Union were present.

Q. Were you there?

A. I stood in the background.

Q. Did you participate in any way in the discussion?

A. Only at one occasion when I was asked. I was asked by the workers, the question came up whether we had a contract with Local 22382, and I told them that I wasn't in any position to answer that, that I had never seen a signed contract.

Q. Were you in a position where you could hear everything that went on during this discussion?

A. Well, after a few remarks by Mr. King and Mr. Torreano had given the general principles of this, the meeting more or less broke up into little groups, various workers talking to various members of the Teamsters Union, and with that I left. I didn't stay to overhear any of that.

Q. Before you left and while you were there

(Testimony of Edward Eugene McIsaac.)

in a position where you could hear, can you state the substance of what was said by King and Torreano and these other representatives of Teamsters, and what was said by the workers?

A. Mr. King introduced himself. The reason for that is he was known because he had been a business agent for the Cannery Workers Union 22382, and he told the workers that he was now working for the Teamsters Union and gave his reasons for going over to that, and stated why he thought the workers should affiliate with the Teamsters Union, the benefits they [101] would gain by it.

Mr. Torreano practically spoke along the same lines. I don't know the exact wording, I didn't pay too much attention to it.

Q. Coming to the next meeting that Mr. Cedar referred to, do you recall Mr. McIsaac, being in the Cooking Department of the company?

A. After we had signed the contract with the Teamsters I called the employees together to notify them that a majority of our workers had signed applications for membership in the Teamsters Union and that we had signed a contract with them and that from now on that we would operate under the Teamsters contract.

Trial Examiner Lindner: Can you fix the date of that?

Q. (By Mr. Agee): Can you tell us about when that took place?

A. I believe that was around May 18. I don't

(Testimony of Edward Eugene McIsaac.)

recall the exact date that contract was signed. It was the same date it was signed.

Q. Was it before or after the contract was signed?

A. It was after the contract was signed.

Q. What evidence if any was presented to you by the Teamsters to substantiate their statement that they represented a majority of the workers in the plant?

A. They presented the signed applications. [102]

Q. Did they do that on one occasion or more than one occasion?

A. On the day of the first meeting which was the second Monday in May, they presented signed applications for 13 of the members which was exactly one half of the membership. At that time they wanted a contract signed and we refused, saying that they would have to show us a clear majority before we would talk to them. So they went away and came back in about either two or three days later and presented, I believe it was either three or four more signed applications of employees of our plant which gave them a clear majority.

Q. When they came back the second time with these additional three or four signed applications did you accept that as final from them or did you demand anything else in writing from them?

A. We demanded a letter in writing stating that fact.



(Testimony of Edward Eugene McIsaac.)

Q. I show you a letter dated May 17, 1945, and ask you if pursuant to your demand that is the letter you got from the Teamsters Union?

A. (Examining document): This is the letter that was addressed to Mr. Capolino.

Mr. Agee: We offer this as Respondent's No. 2 in evidence.

(Thereupon the document above referred to was marked Respondent's Exhibit No. 2 for identification.) [103]

Trial Examiner Lindner: You didn't offer 1 in evidence. It is still marked for identification.

Mr. Agee: We are still hoping to get the original. If no objection is made on the ground that it is not the original, I will offer it in evidence.

Mr. Tobriner: No objection.

Mr. Tillman: I have no objection subject yet to looking at the original.

Mr. Agee: I am sure Mr. White will bring it before the hearing is over.

Trial Examiner Lindner: Under those conditions we will receive Respondent's Exhibit 1 in evidence.

(The document heretofore marked Respondent's Exhibit No. 1 for identification was received in evidence.)

(Testimony of Edward Eugene McIsaac.)

RESPONDENT'S EXHIBIT No. 1

[Letterhead]: Teamsters, Chauffeurs, Warehousemen and Helpers Union No. 386

May 8, 1945

Scientific Nutrition Corporation  
Atwater, California

Attention Mr. Joseph Capolini

Gentlemen:

The following is the action of the Executive Council of the American Federation of Labor in a meeting held in Washington, D. C., on May 3rd, 1945.

"The following is the award of the Executive Council—it is the sense of this Council meeting that the interests of the American Federation of Labor would be protected and preserved in the canning industry in California, Washington, and Oregon by the transfer of the federal labor unions in that field to the Teamsters International Union and that the officers of the Federation be directed to cooperate with the Teamsters International Union in bringing about this result, and that the A. F. of L. cooperate in helping to organize the unorganized in this field."

By the above action the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union of America inherit the agreement now in effect between your company and the

(Testimony of Edward Eugene McIsaac.)

American Federation of Labor and the Local Cannery Workers Union.

The International Brotherhood of Teamsters wish to advise you that we expect your company to immediately recognize only the Teamsters International Union as the representatives of your employees and in return the Teamsters International Union will live up to the agreement now in effect to the letter.

Would appreciate an answer by return mail, your position in this matter.

Yours truly,

/s/ H. L. WOXBURG,

Interation representative.

HLWg

Sp.Del.

Reg.

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Trial Examiner Lindner: You are now offering Respondent's Exhibit 2 in evidence?

Is there any objection?

Mr. Tobriner: No objection.

Mr. Tillman: No objection.

Trial Examiner Lindner: There being no objection, Respondent's Exhibit 2 will be received in evidence.

(The document heretofore marked Respondent's Exhibit No. 2 for identification was received in evidence.)

(Testimony of Edward Eugene McIsaac.)

RESPONDENT'S EXHIBIT No. 2

[Letterhead]: Teamsters, Chauffeurs, Warehousemen and Helpers Union No. 386

May 17, 1945

Scientific Nutrition Corporation  
Atwater, California

Attention: Mr. Joseph Capolino

Dear Sir:

This is to advise you that as of this date the Teamsters Cannery Workers Union of Modesto, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union of America, holds within its membership the majority of the employees of your company.

By virtue of this membership, we are hereby requesting that you immediately sign the enclosed recognition agreement. We also request that you immediately advise all new employees who are now employed or may hereafter be employed, that they must become and remain members of the Teamsters Cannery Workers Union.

For the purpose of avoiding any confusion, we request that you honor and recognize the check-off system in your company covering Initiation Fees, Dues and Assessments upon receipt of signed authorization by the employees.

Yours truly,

/s/ H. L. WOXBERG,

International Representative.

HLM:g

(Testimony of Edward Eugene McIsaac.)

Q. (By Mr. Agee): Following the receipt of the letter of [104] May 17, 1945 in evidence as Respondent's No. 2, did the company enter into a signed contract with the Teamsters?

A. They did.

Q. I hand you this document and ask you if that is the Agreement you have just referred to?

A. (Examining document): It is.

Mr. Agee: Counsel, that is the original, an exact copy of which is attached to my answer, and I picked these things up late last night and had no extra copies. I had six of them made.

May we stipulate that it either be read into the record or that the attached copy which is attached to our Answer will be used for all purposes as though the original were here?

Mr. Tillman: Yes, that is agreeable.

Mr. Agee: We will leave the original there for your inspection.

Trial Examiner Lindner: The copy of the contract which is attached to your Answer was the contract signed by the Respondent with the Teamsters Union on May 18, 1945, is that correct?

Mr. Agee: That is correct.

Q. (By Mr. Agee): In that Agreement where the contract refers to the Master Agreement between the California Processors and Growers, Inc., and the American Federation of Labor and [105] the California State Council of Cannery Unions, did you have reference to the so-called "Green Book Contract" that has previously been mentioned here?      A. Yes.

(Testimony of Edward Eugene McIsaac.)

Q. You are familiar generally with Section 3 of that Master Agreement in regard to the conditions under which employees are to be employed and retained in the employment of the company?

A. I am.

Q. I hand you a letter dated June 22, 1945, and ask you if the company received that letter on or about the date it bears?

A. (Examining document): I did.

Q. Between the signing of this contract, May 18, 1945, and the receipt of that letter dated June 22, 1945, did the company operate in accordance with the terms and provisions of the Agreement of May 18, 1945?

A. We did.

Q. Did the company during that time and up until the receipt of this letter of June 22, 1945, receive any request or demand from the Teamsters Union in regard to the failure of any of the employees to join up as a member of the Teamsters Union?

A. We received no request, only verbal warnings they would have to join or leave our employ. [106]

Q. What was the name of the man connected with the Teamsters Union that communicated to that effect with the company?

A. Well, it as both Mr. King and Mr. Torreano.

Q. On that date at least, or at this time so far as you know, they were then affiliated and acting for the Teamsters Union, were they?

A. They were.

(Testimony of Edward Eugene McIsaac.)

Mr. Agee: I would like to offer that letter in evidence as Respondent's Exhibit 3.

(Thereupon the document above referred to was marked Respondent's Exhibit No. 3 for identification.)

Trial Examiner Lindner: Any objection?

Mr. Tillman: No objection.

Trial Examiner Lindner: There being no objection Respondent's Exhibit 3 is received in evidence.

(The document heretofore marked Respondent's Exhibit No. 3 for identification was received in evidence.)

### RESPONDENT'S EXHIBIT No. 3

[Letterhead Cannery Warehousemen, Food Processors, Drivers & Helpers Local 748]

June 22, 1945

Scientific Nutrition Corporation  
Atwater, California

Attention: Mr. McIsaac

Dear Sir:

In accordance with the terms of the agreement between your company and Local 748 this letter will serve as a notice to your company to terminate the employment of Gus Sedar.

This man has refused to become a member of this

(Testimony of Edward Eugene McIsaac.)

union and under the terms of our contract he is subject to dismissal. We have given Gus Sedar (30) days in which to make up his mind about joining this Local, which is (20) days more than the time stipulated in the contract. Therefore, we ask his immediate dismissal upon receipt of this letter.

Very truly yours,

[Seal]      /s/ H. C. TORREANO,  
Representative.

HCT:BG

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Q. (By Mr. Agee): Following the receipt of this demand contained in the letter of June 22, 1945, and pursuant to the terms and provisions of the Agreement of May 18, 1945, did your company through you discharge Mr. Cedar?

A. We did.

Q. What individual in your company communicated that to him? [107]

A. I communicated it to him.

Q. Did you have any reason for discharging Mr. Cedar other than the fact that you had received this demand contained in the letter of June 22, 1945?

A. No other reason.

Q. Before—withdraw that. Do you recall an occasion when you and Mr. Cedar had a discussion in your office?

A. I do.

Q. Did that discussion—withdraw that. Was that a discussion that was referred to by Mr. Cedar in his testimony this morning?

A. It was.



(Testimony of Edward Eugene McIsaac.)

Q. Having that in mind, did that discussion take place before or after May 18, 1945?

A. It took place after the signing of the contract, yes, about two weeks after.

Q. So that would place it about the latter part of May or the first or second day of June, is that correct?

A. That is right.

Q. Was anyone present in your office other than you and Mr. Cedar?

A. There was no one.

Q. Can you recall the circumstances under which you and he happened to be there together?

A. I don't recall just what brought him there, but while he came in I believe it was something pertaining to the boiler room—while he was there I asked him whether he had made up his mind whether he was going to join the Teamsters or not, and he said he hadn't.

I said, "They are getting pretty tough with me. They are making demands that I let you go." I said, "I don't want to lose a good boilerman. I hoped you would make up your mind one way or the other. You are causing me to have to let you go."

Q. At that time that you had that conversation with him had you already received verbal demands regarding various employees from either Mr. Torreano or Mr. King?

A. I had.

Q. Following the contract of May 18, 1945, did the company deduct the dues from the pay of the employees and deliver those deductions to the Teamsters Union?

(Testimony of Edward Eugene McIsaac.)

A. I went to work on January 1st, 1945, and during that time I believe that all the dues were collected by the shop steward.

Q. Up until what time?

A. They were not deducted.

Q. Up until what time?

A. Up until the signing of this contract.

Q. That was paid then to what union up until the signing [109] of the contract?

A. It was collected for the Cannery Workers Union 22382.

Q. My question was: After this Agreement of May 18, 1945, did the company deduct dues from the workers' pay and turn it over to the Teamsters Union? A. We did.

Q. That continued up until what date?

A. That continued up until March 1st, 1946.

Q. That is when this contract expired, is that correct? A. That is right.

Q. Since March 1st, 1946, has the company entered into any kind of a contract with the Teamsters Union or any other union?

A. We have not.

Q. Did the company ever exclude any representative from the premises of the plant regardless of what union he was representing?

A. Is there any specific time?

Q. To your knowledge at any time.

A. Prior to the signing of this contract both representatives of Cannery Workers Union and Teamsters Union were permitted to come into the plant.

(Testimony of Edward Eugene McIsaac.)

Q. Did those representatives actually come on to the premises of the plant?

A. The Cannery Workers Union was in there almost every day. [110]

Mr. Tillman: Just so the record will be clear, when he says "Cannery Workers Union," that is Local 22382.

The Witness: That is what I referred to.

Q. (By Mr. Agee): You say they were there almost every day?

A. That is right. The Teamsters had never been in there that I recall prior to that original meeting.

Q. That was during all of this period in which the struggle was going on between 22382 and the Teamsters for control of the workers?

A. That's right.

Mr. Agee: What is the practice? Do you always introduce the original document?

Trial Examiner Lindner: Yes.

Mr. Agee: We ask that this replace the exhibit previously marked as Respondent's Exhibit 1.

Trial Examiner Lindner: Yes, unless you want to keep that correspondence.

Mr. Agee: I would like to keep it if I can.

Trial Examiner Lindner: If Mr. Tillman doesn't have any objection, I will allow the substitution of copies for the original.

Q. (By Mr. Agee): What were the initials of Mr. Capolino?

A. He signed his name "J. Capolino."

(Testimony of Edward Eugene McIsaac.)

Q. You were familiar with the record and the correspondence in general of the company, were you, during this period of [111] May 1945?

A. In regards to his relations with the union, yes.

Q. Did you see the original of the letter that Mr. Capolino sent in reply to this letter of May 8, 1945?

A. He showed me a copy of it. I didn't see the original, I saw the copy.

Q. Could you take a look at a copy dated May 9, 1945, and see whether you recognize that as a copy of the original?

A. (Examining document): That is the letter.

Mr. Agee: I have no further questions.

Trial Examiner Lindner: Are you offering that letter into evidence?

Mr. Agee: No, I simply have it here for inspection. I have no additional copies. It really just acknowledges, but for what it is worth I have it here.

Trial Examiner Lindner: Very well.

Mr. Agee, my reading of this Agreement signed between the Scientific Nutrition Corporation and the International Brotherhood of Teamsters on May 18, 1945, refers to the Master Agreement between the California Processors and Workers, Inc., and the American Federation of Labor.

Mr. Agee: That is correct.

Trial Examiner Lindner: And the California State Council of Cannery Unions.

(Testimony of Edward Eugene McIsaac.)

Are you going to introduce that document? [112]

Mr. Agee: The Board has a number of these and I only have two. That is the trouble, they are getting very scarce. They have been in every hearing that has ever been held that this thing has come in. Isn't that correct, Mr. Tillman, that you have copies in your office?

Mr. Tillman: I didn't take part in the representation proceedings.

Mr. Tobriner: It has been introduced, to my own personal knowledge, now in six hearings so there are now twenty-four of them.

Mr. Agee: The last hearing we had in the case in Modesto, that has no bearing on this of course, but the arrangement there was that all parties agreed that they had enough copies of this around so they didn't have to introduce it.

Trial Examiner Lindner: All right. You may cross-examine, Mr. Tillman.

Mr. Tillman: Mr. Tobriner, do you have any questions first?

Mr. Tobriner: No questions.

#### Cross-Examination

By Mr. Tillman:

Q. Mr. McIsaac, you testified that prior to this May 18, 1945, contract with the Teamsters that the employees of the Capolino Company were required to maintain good standing in Local 22382?

A. Yes. [113]

(Testimony of Edward Eugene McIsaac.)

Q. Did you ever fire anyone or was anyone ever fired during the time that you were employed there because he failed to maintain good standing in Local 22382?      A. Prior to that time?

Q. Yes.

A. No, there was no one ever fired.

Q. Did you say you first went to work for the company January '45?      A. January 1, 1945.

Q. Your conclusion that the employees were required to maintain good standing in Local 22382, could you tell us what that is based upon?

A. Based upon the original contract, I believe, that was signed by Mr. Capolino in 1941 when it first was organized.

Q. Was that a contract which was a separate document from the contract in which the CP&G entered into contract with the AFL?

A. It was a separate document but purporting to recognize everything that was in the contract, the master contract.

Q. So the basis for the requirement of maintaining membership would have to be found in this CP&G contract, is that right?

A. That is right.

Q. The letter of May 8, 1945, Respondent's Exhibit No. 1 which was directed to the company advising the company of the [114] jurisdiction of the Teamsters, was that letter posted by the company?

A. Yes, I believe it was.

(Testimony of Edward Eugene McIsaac.)

Q. Where was the letter posted?

A. It was posted in an area between the Cook Room and the warehouse where most of the boys would congregate during their rest periods, on the bulletin board.

Q. Was that letter posted before this meeting on the second Monday in May or when the letter arrived or afterward?

A. It was posted immediately after. The original letter wasn't, it was a copy of the letter.

Q. A copy was posted? A. Yes.

Q. That would be before the meeting at which Mr. Capolino spoke?

A. Well, I wouldn't want—I don't recall. It may have been before or after. I believe it was right after, though.

The reason for doing it was so the employees could read this letter and see for themselves what we had received.

Q. In your position as Plant Superintendent was it customary that you see all correspondence that came in to either Mr. Capolino or the plant?

A. When you refer to "all correspondence" do you mean everything, all correspondence coming to the Plant, or relative to labor relations? [115]

Q. Well, all correspondence which had reference to the Plant, I mean, excluding personal correspondence?

A. Well, anything pertaining to production of the plant and production end of it and labor relations, yes, I had access to that.

(Testimony of Edward Eugene McIsaac.)

Q. Do you remember that the company received a letter from Mr. Tomson in or about May 1945 advising Mr. Capolino that the Cannery and Food Process Workers of Modesto Area represented his employees? A. What date?

Q. In the month of May.

A. I recall something about the Seafarer's Union, they were affiliating with the Seafarer's Union to represent them.

Mr. Tillman: I will ask that this be marked for identification Board's Exhibit 3.

(Thereupon the document above referred to was marked Board's Exhibit No. 3 for identification.)

Q. (By Mr. Tillman): I will show you a copy of Board's Exhibit 3 for identification and ask you if you ever saw that before?

Mr. Tobriner: In order that I may be in a position to object to this letter if I think that necessary, is it possible for me, Mr. Tillman, to please see the charge that was filed on behalf of Cannery and Food Process Workers Union? [116] You showed it to me this morning. I think it was filed May 19.

Mr. Tillman: I will be glad to show you the charge as soon as the witness answers that last question.

The Witness: What was the question?

Trial Examiner Lindner: Read the question please.

(The question was read by the reporter.)

A. I saw this letter.



(Testimony of Edward Eugene McIsaac.)

Q. (By Mr. Tillman): Was it received by the company on or about the date it bears?

A. I would say on or about that date.

Mr. Tillman: The record should show that I am showing Mr. Tobriner the charge he requested.

I will offer Board's Exhibit 3 in evidence.

Mr. Agee: I have no objection.

Trial Examiner Lindner: Mr. Tobriner, do you have any objection?

Mr. Tobriner: I object on the ground that the Regional Office of this Board on the basis of this letter was given a charge signed by the same person who signed this letter, the charge being dated as filed on May 19, 1945, a charge that the company "interfered with, restrained and coerced its employees in the exercise of their rights guaranteed under Section 7 of the National Labor Relations Act."

I refer to the statement this morning by Mr. Tillman that this charge was dropped and no complaint was issued on it. In view of the action of the Board and the basis of this charge filed by Mr. Tomson, signatory of this letter, I fail to see how any action that Mr. Tomson took notifying this company of alleged but evidently spurious claims can now be used by this Regional Office one year later as the basis for its contention in this case.

Mr. Tillman: My answer to that would be there was some testimony by the witness that the company had no notice of any other union making a claim.

(Testimony of Edward Eugene McIsaac.)

Mr. Agee: No, I said the company never had notice of any other union making a claim other than 22382 and Teamsters, and it was a conflict between those two.

Mr. Tillman: This is a third union.

Mr. Agee: You have to go into that with the witness to be fair to him, whether he distinguishes between this union and Local 22382. He may consider them identical.

Trial Examiner Lindner: Do you object to this?

Mr. Agee: In view of what counsel just stated, yes. I think at this time it should be first established this witness realized any difference between 22382 and the writer of this letter referred to.

Mr. Tillman: You can do that on redirect examination.

Mr. Tobriner: May I point out it does not bear out Mr. Tillman's consideration. It says that in the exercise of [118] their legal rights they have organized themselves under the name of Cannery and Food Process Workers' Union of Modesto Area. And "this labor union exists under and by virtue of charter issued to it by Cannery and Food Process Workers' Council of the Pacific Coast. This Council is prepared upon request of the Local Union to represent the Local Union and the employees in your plant in collective bargaining matters. Until such request——"

Trial Examiner Lindner: Just a moment. I will overrule both of your objections and receive the letter in evidence.

(Testimony of Edward Eugene McIsaac.)

Mr. Tobriner: Pardon me, Mr. Trial Examiner, but I would like to complete my argument.

Trial Examiner Lindner: You are just reading from the letter.

Mr. Tobriner: I was reading to base an argument on it. I think for the purpose of the record that should go into the record.

I point out this letter does not bear out the contention made for the following reasons: The letter merely states that another union called Cannery and Food Process Workers' Union of Modesto Area had made a request to a certain Council that the Council would be prepared to represent the employees in collective bargaining matters. If the Trial Examiner will note the letter with care, it will become evident that it says "that until such request is made"—and there is no statement that the request was made—"the Local Union is an autonomous organization"—and then there is a period. I am not quite sure what that means. Until the request is made, there is no showing that this Local Union is the collective bargaining agency, or the Council, I should say, is the collective bargaining agency.

There is no showing here a request was made by the Local Union to the Cannery & Food Process Workers' Council that the Council was to represent these employees.

Trial Examiner Lindner: Are you contending that this letter was sent to the respondent by the

(Testimony of Edward Eugene McIsaac.)

Cannery and Food Process Workers' Council of the Pacific Coast to represent the employees in the plant?

Mr. Tillman: I contend that it was sent by the Local from the Modesto area for that purpose, and that as the letter indicates, the Local in Modesto area was affiliated with the Council, Pacific Coast Council.

I think Mr. Tobriner's argument, of course, is argument as to the intent of the letter which he can reserve for some other time.

Mr. Tobriner: Is it your contention that Council now is a representative of the employees—if I may speak to counsel, Mr. Examiner.

Trial Examiner Lindner: That is what I asked Mr. Tillman. Is it your contention that at the time this letter was sent [120] that this organization represented the respondent's employees as collective bargaining agent?

Mr. Tillman: No, I don't go that far. I merely go to the extent of showing that the company was put on notice of the claims of another union.

Trial Examiner Lindner: That is what I thought.

I will overrule your objection as I did previously, and receive the letter in evidence.

(The document heretofore marked Board's Exhibit No. 3 for identification was received in evidence.)

(Testimony of Edward Eugene McIsaac.)

BOARD'S EXHIBIT No. 3

[Letterhead Cannery Workers']

May 11, 1945

Scientific Nutrition Corporation  
c/o Capolino Packing Corporation  
Atwater, California

Att: Mr. J. Capolino

Gentlemen:

It is our information that you have been requested to make arrangements to substitute the Teamsters' Union for the California State Council of Cannery Unions in our Collective Bargaining Contract.

This letter is to advise you that the person or persons making that request were without any legal authority whatsoever. They do not represent the employees in your plant and so far as we know no representative group of employees have requested them to act as their bargaining agent.

You are further advised that an effort has been made by certain international officers of the Teamsters' Union to transfer all members of Local 22382 to that Union without regard to the wishes of the members. They have had the apparent support of the Executive Council of the American Federation of Labor. As a result of this activity the employees involved have terminated their membership in Local 22382 and have in the exercise of their legal rights,

(Testimony of Edward Eugene McIsaac.)

organized themselves under the name of Cannery and Food Process Workers' Union of Modesto Area. This labor union exists under and by virtue of charter issued to it by Cannery and Food Process Workers' Council of the Pacific Coast. This Council is prepared upon request of the Local Union to represent the Local Union and the employees in your plant in collective bargaining matters. Until such request is made and until you are advised to the contrary, the Local Union as an autonomous organization, is the representative in collective bargaining matters of all the employees in the plant except supervisory employees.

We shall be pleased to meet with you or your representative for the purpose of discussing our Collective Bargaining Agreement.

Very truly yours,

CANNERY AND FOOD  
PROCESS WORKERS'  
COUNCIL OF THE  
PACIFIC COAST.

/s/ R. M. TOMSON.

reg. mail

return receipt requested

(Testimony of Edward Eugene McIsaac.)

Q. (By Mr. Tillman): What was Mr. White's position at the company back in May 1945?

A. Mr. White was brought into the plant to gain knowledge as to its management because Mr. Capolino knew at that time that he was going to retire at the end of the year. Unfortunately, he died before he had an opportunity to retire.

At the time Mr. White's capacity was, let us say Assistant Manager to Mr. Capolino.

Q. What is his position today?

A. Manager.

Q. At this meeting, the second Monday in May, at which Mr. Capolino spoke, you testified that one of the matters that Mr. Capolino stated was that the employees should get together and decide which union to affiliate with, is that [121] correct?

A. That is right.

Q. Can you tell us what he meant by "decide which union to affiliate with?"

A. There had been so much discussion, we have had these various letters that have been presented here, first one union and then another. Local Cannery Workers 22382 had been—their office had been closed on a court order, everything was pretty much in confusion who had control of the canneries.

We had these demands by the Teamsters. First Tomson had tried to get into the Seafarers. I believe it was, and they were working from that angle. Then they formed this other union. Everything was in so much confusion that after a trivial discussion between Mr. Capolino and myself we

(Testimony of Edward Eugene McIsaac.)

decided the best thing was to put the issue before the employees, tell them to make some decision so we could get down and operate our plant reasonably.

Q. Did you have some specific unions in mind that they should make up their mind about?

A. You heard my testimony. He said they could side up with the devil, that would be all right with him.

Q. At this meeting in the Cooking Department where you called them together and announced that the company had signed a contract with the Teamsters, did you show the contract to the employees at that time? [122]

A. No, I never.

Q. Did you ever show the contract to them?

A. The contract was shown a day or so later. The union man came in there, that is Mr. King, Mr. Torreano and Mr. Brown, and asked permission to talk to the employees, and it was after the contract was signed and we requested them to wait until the 10 o'clock rest period and talk to them during that time. At that time they showed the signed contract to the employees.

Q. The Teamster representatives did?

A. They did.

Q. Was that contract ever posted at the plant?

A. No, not to my knowledge. We had only this one copy here.

Q. Did you ever post any notice that the employees could see the contract?



(Testimony of Edward Eugene McIsaac.)

A. Will you state that again?

Q. Did you ever post any notice to the effect that the employees could see the contract?

A. No, we never.

Q. You testified that the Teamsters came around on the second Monday of May with the 13 application cards. Were these cards presented to the company before this meeting at which Capolino spoke?

A. You mean the first meeting referred to?

Q. Yes.

A. No, it was after that meeting.

Q. Was it the same day or several days later, or what?

A. It was the same day. They came in later in the day and asked permission to talk to the employees.

Q. You testified they came in around 10 or 10:30.      A. That's right.

Q. Did they have the cards at that time when they came in?      A. They had application blanks.

Q. They were already filled out when they came into the plant?      A. I don't know.

Q. They had blank cards?

A. I wouldn't want to answer that, I don't know.

Q. Just when was it that they offered the 13 cards?

A. About 2 o'clock in the afternoon.

Trial Examiner Lindner: Was that after they had seen the employees in the plant?

The Witness: Yes, that's right. They had talked to them.

(Testimony of Edward Eugene McIsaac.)

Q. (By Mr. Tillman): Did you examine the cards to the extent that you would know what the wording was on any one of them?

A. Oh, I would recognize the contract if I had seen it. It merely states they were asking to affiliate with the [124] Teamsters, Chauffeurs and Warehousemen. I don't remember the exact words.

Q. That is what I had in mind, what union was stated on the application.

Did you sit in on the negotiations which resulted in that May 18 contract?

A. I did not. Mr. Capolino took care of all that.

Q. Did you have any part in checking the cards presented by the Teamsters with the payroll, or anything like that?

A. I did.

Q. When was that check made.

A. About four days, I would say after. Three or four days after the first meeting.

Q. What cards did you check, the 13 that they had presented on the second Monday in May?

A. The original 13, we told them we couldn't accept that because it was only 50 percent. Unless they could present a clearcut majority of our regular employees, we couldn't negotiate with them.

Q. Did they leave the 13 cards with you?

A. No, they didn't. They brought them all back in one group.

Q. This was four or five days later they came back with a new batch?

A. Three or four days later.

(Testimony of Edward Eugene McIsaac.)

Q. At that time you made a check of the cards?

A. I witnessed all those signatures. We checked the signatures with the signatures we have on our applications the employees make when they come to work for us.

Trial Examiner Lindner: When you say you witnessed them, you mean you checked them yourself?

The Witness: We checked them. I checked them with the payroll department.

Trial Examiner Lindner: Did you do that yourself?

The Witness: Yes.

Mr. Tillman: I believe that is all.

### Redirect Examination

By Mr. Agee:

Q. For the sake of clearness, this morning when Mr. Cedar was testifying they referred to meetings one, two and three. Do you have those events in your mind now?

A. I believe meeting one refers to the meeting with Mr. Capolino and the employees with no union representatives present.

Q. That's right.

A. Meeting number two refers to the meeting about two hours later with representatives of the Teamsters Union.

Q. Yes.

A. Meeting number three, I believe, refers to the meeting that I had with them in the Cook Room

(Testimony of Edward Eugene McIsaac.)

informing them, verbally informing them that we had signed a contract with the [126] Teamsters Union.

Q. Right.

I am just interested in the time that consumed. You just mentioned a few minutes ago meeting number three took place during a rest period of approximately ten minutes, is that correct?

A. That would really be meeting number four when the representatives of the Teamsters Union came in and went out during the rest period and showed the contract to the employees and informed them they were now being represented by the Teamsters Union.

Q. Then for the moment let us go back to meeting number one. About how much time did that take?

A. Ten to fifteen minutes.

Q. Was that during working hours?

A. It was about 8:30 in the morning.

Q. Were the employees paid for that time that they spent in attending this meeting?

A. They were.

Q. Meeting number two took about how long?

A. I would say about one half hour.

Q. Was that during regular working hours?

A. Well, it took in part of their rest period and some of the working time.

Q. Meeting number three took how long?[127]

A. Oh, two or three minutes.

Mr. Agee: That is all.

(Testimony of Edward Eugene McIsaac.)

Trial Examiner Lindner: Do you have any questions?

Mr. Tobriner: No questions.

Q. (By Trial Examiner Lindner): Did you testify just a minute ago that the representatives of the Teamsters notified the employees that the contract had been signed with them?

A. They did.

Q. Did either yourself or Mr. Capolino so notify the employees?

A. I had notified them prior to that, yes.

Q. You had notified them prior to that?

A. In what we refer to as meeting number three.

Q. You testified, Mr. McIsaac, that at the first meeting that was addressed by Mr. Capolino——

A. I didn't quite catch that.

Q. You testified that at the first meeting which was addressed by Mr. Capolino, that mention was made that the company was afraid that there would be a lot of trouble, is that correct?

A. That's right. There was so much conflict between these various union factions we were afraid it might end up in a union war and close our plant.

Q. How many union factions were there at that time? [128]

A. Well, they had the original Local 22382; groups in that body were trying to get into the Seafarers. That wasn't working out.

Then they formed this other, I don't recall the name——

(Testimony of Edward Eugene McIsaac.)

Mr. Tobriner: Cannery and Food Process Workers.

A. (Continuing): They formed that, and we had the Teamsters, so there was really four factions working there all at one time trying to gain control of these workers which didn't tend to create harmony in the plant.

Q. (By Trial Examiner Lindner): Were you in charge of labor relations for the plant?

A. Yes, it's my duty to work out—

Q. Did you consider that the company had a closed shop? Do you understand what I mean by "closed shop"? A. Yes.

Q. A closed shop contract with Local 22382 when you first became employed there?

A. I did.

Q. When did you consider that that contract had ceased.

Mr. Agee: What was that?

Q. (By Trial Examiner Lindner): When did you consider that the closed shop contract with Local 22382 had come to an end?

A. I did know that Mr. Capolino notified that local on—It was immediately, I believe, after the first of the year [129] that the Scientific Nutrition Corporation had taken over full control of the plant and that any further negotiations would have to be with them, and that until such time as they negotiated a contract that it would be no longer under his name. To the best of my knowledge then we had no signed contract after that time.

(Testimony of Edward Eugene McIsaac.)

Q. Do you know of any signed contract that you had subsequent to 1941?

A. I have never seen any other contract, only that.

Q. You saw the contract that was signed in 1941 with Local 22382, is that correct? A. Right.

Q. Was it your understanding at the time that you became employed in January 1945 that that contract was then in existence?

A. That was my understanding.

Q. Is there any difference between the Scientific Nutrition Corporation and Capolino Packing Corporation?

A. Originally it was Capolino Packing Corporation. Mr. Capolino sold his plant to the Scientific Nutrition Corporation and the plant did and still does operate under the name of Capolino Packing Corporation here. We are a division of the Scientific Nutrition Corporation.

Q. When did that sale take place, if you know?

A. That sale took place, I believe in the early part of [130] 1944.

Q. It was prior to your employment with the company?

A. Prior to my employment. I couldn't tell you the exact date.

Q. You referred to a letter that Mr. Capolino sent to Local 22382 subsequent to January 1, 1945, in which he advised them of the change of ownership, is that correct? A. That's right.

Trial Examiner Lindner: Do you have a copy of that letter, Mr. Agee?

(Testimony of Edward Eugene McIsaac.)

Mr. Agee: No, I haven't. Is it in the file, Mr. White, do you know?

Mr. White: I imagine it is in the file.

The Witness: I might state, if I may at this time, that many of our letters that were in Mr. Capolino's file at the event of his death couldn't be found.

Q. (By Trial Examiner Lindner): Tell us again, if you will please, Mr. McIsaac, what the substance of that letter was.

A. The substance of that letter was that the Scientific Nutrition Corporation had taken full ownership of the plant and that any future labor contracts would have to be signed by the New York office until such time as he was authorized to do so himself. That was, I believe, in answer to a letter which is generally always sent out prior to the January first opening up the negotiations of a new contract, [131] that future contracts would have to be in the name of Scientific Nutrition Corporation rather than Capolino Packing Corporation.

Q. To the best of your knowledge when was that letter sent?

A. Well, I believe it was right after January first. It was in answer to a request to open up negotiation for a new contract for 1945 which has to be made prior to January first.

Q. Subsequent to sending that letter, did you continue to recognize Local 22382 as the exclusive bargaining representative of the employees?

A. We did.



(Testimony of Edward Eugene McIsaac.)

Q. On the same terms and conditions as the previous contract? A. That's right.

Q. And you continued to recognize them up until the signing of this new contract with the International Brotherhood of Teamsters on or about May 18, 1945, is that correct?

A. That's correct.

Q. Did you make any inquiry of Local 22382 before you signed this contract of May 18, 1945, whether or not they had relinquished the exclusive representation of the employees of the plant?

A. I believe the offices of that union were closed under [132] court order at that time.

Q. Will you answer my question. Did you make any inquiry of any of the officers or any of the other members of that union at that time?

A. We had been in discussion with them. They were in the plant almost every day. However, they had first come representing themselves as being with the Seafarers, and then there was this Cannery and Food Process Workers.

Q. In other words, you are telling us now at that time there had been a split up of the original Local 22382, is that correct?

A. That's correct.

Mr. Agee: Just a second. He said their offices were closed through court process which is a fact, and they were in the hands of the receiver at that time.

Trial Examiner Lindner: He has also testified—if I am incorrect let the record be corrected—that

(Testimony of Edward Eugene McIsaac.)

some of the officers were then associated with the Seafarers and others with the Cannery and Food Process Workers of Modesto, and others with the Teamsters, is that correct?

The Witness: Well, when they closed Local 22382 on that court order, they affiliated, so-called affiliated themselves with the Seafarers and came in there representing themselves as being affiliated with the Seafarers.

Then immediately after that, why we were informed that [133] they couldn't affiliate with them and this other union, Cannery and Food Process Workers Union, Mr. Tomson was the head of all three of these, that is what led us up to get our employees together to see if we couldn't get some clear-cut idea what they wanted, because first one week there would be one union represented and then there would be another one.

Mr. Tobriner: If I may interpolate here, I would like the record to show that the witness has interpreted the word "offices," "e-e-s," and your question was officers, "e-r-s." The witness, I am sure, meant that the offices, actually headquarters of 22382 were locked, and I as attorney for Local 22382 did secure a court order closing those headquarters and turning over all the funds to the American Federation of Labor.

Trial Examiner Lindner: I understood that the offices were locked, but I also understood the witness to mean that some of the officers including Mr.

(Testimony of Edward Eugene McIsaac.)

Tomson and some other names mentioned had then tried to become affiliated with some other organization.

Mr. Tobriner: That is correct. Mr. Tomson, the Secretary, resigned from 22382 and made his affiliation with the Cannery and Food Process Workers Union of Modesto Area. 22382 was put under trusteeship, and if Mr. Tillman likes, I can take the stand for this, but it is common [134] knowledge in the case. Mr. Dan Flanagan of the American Federation of Labor was put in charge of 22382.

Q. (By Trial Examiner Lindner): Did you advise the Teamster representatives, Mr. McIsaac, when they presented you with signed applications of some of the employees that they should negotiate with your New York office?

A. I can't answer that because that was done with Mr. Capolino. I did witness those applications and check them and make sure they were the right signatures of our employees, but I was not present when the final negotiations were made. Mr. Capolino handled that entirely by himself.

Trial Examiner Lindner: I have no further questions.

Mr. Agee: I have just one question.

Q. (By Mr. Agee): You testified that you came to the company in January of 1945 and that to your knowledge between that time and May 18, 1945 no employee had been discharged because of failure to maintain good standing in 22382, is that correct?

A. Yes.

(Testimony of Edward Eugene McIsaac.)

Q. Did Mr. White come to the company at the same time?

A. He came about three weeks after I did.

Q. Three weeks after, so his duration was even shorter than yours at that time? A. Yes.

Mr. Agee: That is all.

### Recross-Examination

Q. (By Mr. Tobriner): Mr. McIsaac, the contracts that you mentioned that you had with 22382 for some years prior to the events we talked about today were with 22382 when it was a member of the American Federation of Labor, that is correct, is it not?

A. That is correct.

Q. You did receive a letter on May 8 which is your Exhibit No. 1, stating that the American Federation of Labor had assigned jurisdiction over the workers who were in 22382 to the Teamsters, is that correct? A. That is correct.

Q. Did you know that 22382 at this time had been placed in the hands of a trustee, Mr. Dan Flanagan?

A. I had read it in the newspapers.

Trial Examiner Lindner: At what time?

Mr. Tobriner: During the month of May.

Trial Examiner Lindner: What was the exact date Mr. Flanagan took over trusteeship of that organization, if you know?

Mr. Tobriner: I know it was in the early part of May. I don't know if it was May 10th or May 15th, but it was prior to May 15.

(Testimony of Edward Eugene McIsaac.)

Trial Examiner Lindner: Was that on order of the court? [136]

Mr. Tobriner: There was an order signed by William Green appointing him as trustee, and thereafter he went to court and I was his attorney securing a restraining order against the former officers of 22382 from interfering with his trusteeship. That matter was heard and the court sustained the position.

Trial Examiner Lindner: Let me interrupt. I would like you to proceed with your questioning of this witness, and then if you will, I would like you to state for the record the exact chronology of the trusteeship and so forth.

Mr. Tobriner: I will be glad to do that.

Q. (By Mr. Tobriner): Did you ever have any notice from Mr. Flanagan, either written or oral, that he objected to the recognition by your company of the Teamsters Union?

A. I don't recall of any myself.

Q. You never had any notice from Mr. Flanagan that you recall objecting to the Teamsters?

A. That's right.

Q. You never had any objection from Mr. Green, American Federation of Labor, objecting to your recognition of the Teamsters? A. No.

Q. You never had any recollection of any one American Federation of Labor organization objecting to your recognition of the Teamsters? [137]

A. No.

Trial Examiner Lindner: How would Mr. Green, Flanagan, other representatives of the

(Testimony of Edward Eugene McIsaac.)

American Federation of Labor object to the company's recognizing the Teamsters? What is the relevancy?

Mr. Tobriner: I want to show what was done, recognizing the Teamsters, was not in conflict with Local 22382.

Trial Examiner Lindner: Not in conflict with the thinking of Mr. Green and Flanagan?

Mr. Tobriner: No, Local 22382. I thought in some of your questions you thought perhaps in recognizing the Teamsters he was breaking off with 22382, and perhaps there was something wrong there. I want to make sure the chain of events whereby recognition of the original 22382 then related to the recognition of the Teamsters and was in conformity with his previous relationship with 22382.

Q. (By Mr. Tobriner): Is it a fact that the Teamsters were regarded, or were they regarded as a successor to 22382?

Mr. Tillman: Regarded by whom?

Q. (By Mr. Tobriner): By the Company.

A. By the company?

Q. Yes.

A. After a majority of our employees signed applications we recognized them.

Mr. Tobriner: Thank you. [138]

Mr. Tillman: I just have one question.

Q. (By Mr. Tillman): Do you know whether or not the company stopped deducting dues for Local 22382 at the same time they had sent this letter to Local 22382 you mentioned?

(Testimony of Edward Eugene McIsaac.)

A. We deducted no dues after Mr. Capolino wrote that letter the first of the year. The dues were deducted by the shop steward.

Q. Were the dues stopped—was the collection of the dues stopped as a result of that letter or in conformance with it?

A. I presume it was a result of that letter. They were informed in that letter they would have to collect the dues.

Mr. Tillman: That is all.

Trial Examiner Lindner: Any further questions?

Mr. Agee: No questions.

Trial Examiner Lindner: You are excused.

(Witness excused.)

Trial Examiner Lindner: You may call your next witness.

Mr. Agee: I have no further witnesses.

Trial Examiner Lindner: Do you have any witnesses?

Mr. Tobriner: I have no witnesses.

Trial Examiner Lindner: Does Mr. Horie have any witnesses?

Mr. Horie: No.

Mr. Tobriner: Perhaps I should make that statement, [139] but I can do it in the course of argument.

Trial Examiner Lindner: I think you may well do that in the course of your oral argument.

Is there any further evidence that any of the parties wish to adduce upon any of the issue of this proceeding at this time?

Mr. Tillman?

Mr. Tillman: No.

Trial Examiner Lindner: Mr. Agee?

Mr. Agee: No.

Trial Examiner Lindner: Mr. Tobriner?

Mr. Tobriner: No.

Trial Examiner Lindner: Mr. Horie?

Mr. Horie: No.

Trial Examiner Lindner: There being no further evidence with respect to the issues of this proceeding that any of the parties wishes to adduce, I shall now hear motions and arguments upon the merits.

Do you have any motions, Mr. Tillman?

Mr. Tillman: I have no motions.

Trial Examiner Lindner: Mr. Agee?

Mr. Agee: I have not.

Trial Examiner Lindner: Mr. Tobriner?

Mr. Tobriner: The motion I made, I prefer to argue with the rest of the case if I may. [140]

Trial Examiner Lindner: Mr. Horie?

Mr. Horie: No.

Trial Examiner Lindner: At this time then we will hear oral argument.

You may proceed with oral argument, Mr. Tillman.

Mr. Tillman: With respect to the 8 (3) part of the complaint, the facts are very simple from



the standpoint of the Board. The undisputed testimony shows that Mr. Cedar was discharged because he refused to join the Teamsters. That in effect constituted encouragement of the Teamsters and therefore would be a violation of Section 8 (3) of the Act unless the company were protected by some valid closed shop contract.

Before discussing the question of a valid closed shop contract, I might state that the discharge of Mr. Cedar also discouraged membership in the FTA, CIO, although the FTA-CIO was not in the picture at that time; but the fact that he had been discharged for refusing to join was an indication of what would happen to other employees and also an indication of the fact that the CIO members would not receive employment at the company. In that respect, too, the discharge was in violation of Section 8 (3) in that it discouraged membership in the CIO.

Trial Examiner Lindner: Do you contend that despite the fact that this discharge took place before any activity [141] on the part of the CIO became known in the plant?

Mr. Tillman: May I have that read?

(The Trial Examiner's question was read by the reporter.)

Mr. Tillman: Yes. My contention is, of course, that it set a pattern, or at least it was a precedent which any employee in the plant who was inclined to join the CIO was faced with, and in that sense such an employee would be fearful of joining the

CIO because of the possibility that he might be discharged. Of course, the fact that Mr. Cedar had been discharged must have been well known at the time of the election and would tend to discourage any other employees in the plant from showing favoritism for the CIO.

As I stated, this is clearly a violation of the Act unless the company is protected in some way under the proviso to 8 (3) by having entered into a valid closed shop contract with the union.

There has been offered in evidence a contract dated May 18, 1945, which apparently was offered for the purpose of showing that it adopted the so-called "Green Book Contract" existing between the CP&G and the American Federation of Labor Unions.

I might point out first that this so-called adoption contract of May 18, 1945, nowhere in it contains any provision that it does adopt the "Green Book Contract." It merely agrees to recognize the Teamsters as the bargaining [142] representative for the employees who are covered by that contract, and further, to place in effect any amendments to the Master Agreement. But insofar as adopting the Master Agreement itself, the document does not do that on its face.

Assuming that the parties understood that they were adopting the "Green Book Contract" by this document of May 18, 1945, we have to search the "Green Book Contract" for any closed shop provision because there is no closed shop provision in the contract of May 18, 1945.

It is the contention of the Board, of course, that there is nothing in the Green Book Contract'' in the nature of a closed shop provision. There is a provision with respect to hiring, what you might call a "hiring hall" provision, but nothing in there that required employees who were hired prior to the contract going into effect or being adopted to maintain membership in the Teamsters at the cost of losing their job if they failed to do so.

In that connection that the "Green Book Contract" does not contain a closed shop clause, I would like to cite the Pilot Radio Case, 14 NLRB 1085, and the Isthmian Steamship Company, 22 NLRB 689.

Now, to go one step further and assume that the "Green Book Contract," that is, assume for purposes of argument that the "Green Book Contract" does contain a closed shop clause, there still are certain conditions imposed by the [143] proviso in Section 8 (3) which must be met in that contract to protect a company when it discharges an employee. Among the conditions are that the contract must be with an organization which is not assisted in getting the contract or not assisted in any way by unfair labor practices.

The Board has attempted to show at this proceeding that the Teamsters was an assisted union, that is, assisted by unfair labor practices. In connection with that, I might cite the fact that testimony of Mr. Cedar and also Mr. McIsaac shows that the Teamsters were permitted free access to the plant, and not only permitted free access, but the em-

ployees were collected together to make it more convenient for the Teamsters to address the employees.

Further assistance consisted of the fact that the Teamsters were permitted to solicit membership on the company time and property following this meeting, and subsequently four and five days later.

Additional assistance took place in that first meeting which Mr. Capolino called in which he, according to Mr. Cedar's, and I think Mr. Cedar's testimony should be considered, told the employees that they should join the Teamsters because if they didn't join the Teamsters the Teamsters would stop hauling produce and the cannery would be forced to close.

That, of course, didn't give the employees much alternative, [144] and the fact that the company, as it were, might have been caught in the middle of an economic battle between two unions didn't, of course, justify them in giving assistance to the Teamsters.

I think still additional assistance can be found in the fact that the company was well aware May 18, 1945, when they signed the contract with the Teamsters, that there was at least one other union or at least there were factions, parts of unions which were contending to represent their employees. Nevertheless, in the case of these conflicting claims, the company went ahead and recognized the Teamsters. It is true enough that they recognized the Teamsters after a check of cards, but since these cards had been secured in the plant with the assistance of the company, and inasmuch as employees are probably inclined to sign cards for any union

that comes along in such a situation as this, the cards themselves don't bear much weight as to whether or not the Teamsters represented a majority.

For these several reasons that I last cited, facts which constitute 8 (1) or interference, assistance and preference, the company has assisted the Teamsters with unfair labor practices and as a result the Teamsters is an assisted union and the closed shop contract, if it be found to be such, since it is with an assisted union, does not give the company any right or did not give the company any right to [145] discharge Mr. Cedar. They were not required to do so, and therefore it is 8 (3).

That is all.

Trial Examiner Lindner: Is it your contention that the contract of May 18, 1945, was invalid because of the assistance granted by the company?

Mr. Tillman: That is correct.

Trial Examiner Lindner: Mr. Agee.

Mr. Agee: The company takes the position that the decision of the National Labor Relations Board rendered on February 15, 1946, in which we were involved as participant and party specifically styles the contract arrangement which we had through the years from 1941 with Local 22382 as being a closed shop contract; and I refer to page 5 of the Decision which we cite: "In this state of the record no legal aspect may be given the closed shop provision contained in the current collective agreements after their expiration date."

The current contract runs from March first to March first and the current contract that was had

with Local 22382 expired March 15, 1945, unless, under provisions of the Master Agreement, negotiations were then pending, or unless either party to the contract had given previous notice in writing 15 days before the termination date.

It is our position that despite the statement of the Board's counsel that our Agreement embodying by reference [146] the "Green Book Contract" did not constitute a closed shop, we not only contend to the contrary but point to the language of the decision of the Board itself as corroborating and verifying our contention in that respect.

The next proposition is this: That even though as set forth in the charge on file here, the Board, in its decision, enjoined the canners from dealing with any union as an exclusive bargaining agent, that that was mere dicta on the part of the Board, and in fact the Board's attorneys in other hearings held up and down the valley have acknowledged that for the record, and all they had before the Board at that time was the point as to whether the election held in October, 1945, was or was not a valid election; and having determined that point, to go on and enjoin the canners as they attempted to do, from following out what we claim are the plain provisions of the Wagner Act were mere dicta, did not have force or affect of law.

Under those circumstances where we have at the time the incident occurs, only 26 employees in a non-supervisory capacity, and written evidence which is verified by our own records proving beyond any doubt that this Teamsters Union did represent the

majority of the workers, we were required under the Wagner Act to deal with that body as exclusive bargaining agent. We entered into the contract May 18, 1945, under those circumstances, and by reference [147] the "Green Book Contract" was incorporated therein and we agreed to live up to the terms and provisions thereof.

We say that it constituted a closed shop contract, not only on the basis of what was in writing but on the basis of the oral understanding existing between the union and carried out over the period of years by conduct of the parties. We take the position that the Teamsters succeeded to the position 22382 formerly had occupied insofar as the company was concerned, and we merely changed our dealings from 22382 under the circumstances recited, to the Teamsters Union and thereafter treated the Teamsters Union exactly as we had for many years treated Local 22382.

As counsel admits, if we entered into a valid contract on May 18, 1945, under terms and provisions requiring us to maintain a closed shop provision and to discharge any employees who did not become members of the Teamsters Union and maintain good standing in that union, obviously the discharge of Mr. Cedar was not improper.

The contention is made the contract of May 18, 1945, was invalid because it was brought about through the assistance of the company. Well, they brought one witness here, Mr. Cedar. Mr. Cedar testified about his discharge on June 22, 1945. He has since, of course, affiliated with the FTA-CIO,

and it is a question. I suppose, for the tryer of facts to determine whether Mr. Cedar is biased or prejudiced [148] or whether he strained himself just a little bit when he went beyond what we contend took place and stated the company said: "Are you going to join the Teamsters Union?" We contend they said, "Boys, make up your minds, decide what you are going to join. We don't care what you join, but confusion will result in the company closing down. So for heaven's sake, make up your minds and let's go on with our work."

I don't know what an employer is supposed to do or not do. Counsel made the remark that the mere fact that the company is caught in an economic fight between two unions does not justify it. Well, I assume it doesn't justify certain things, but whether a company can stand idly by and see two or more unions get into an economic fight in which the company will be extinguished—there is no question about that, it can't continue operation—whether that is what the law requires of them, I don't know.

As collaboration of the fact that the company in good faith dealt with the Teamsters as the representative of the majority of the workers, we point to the election that was held in October of 1945 which would be some five months after this contract of May 18, 1945, was signed, and we point to the fact that according to the Board's findings there, they have no challenged ballots, they have no void ballots, and yet a clear majority was cast for the Teamsters Union. And [149] this third union that was injected here got absolutely no votes at all.



If the company in good faith dealt with the Teamsters Union as the representative of the majority of the workers pursuant to that entering into of this contract, then the whole case, of course, falls, unless the tryer of the facts wants to take literally every word of Mr. Cedar and to draw inferences and conclusions from the testimony unfavorable to the company and build up a picture of coercion, intimidation and persuasion on the part of the company. That is something over which we have no control, that is going to depend upon the individual who has the duty of determining the facts; but for what it is worth, I think Mr. McIsaac gave a very clear picture of the situation here. I don't think the company has injected itself, I don't think the company was happy that the Teamsters came around, I don't think the company was pleased because their dealings changed from 22382 to the Teamsters Union, I don't think the Company had anything to do with originating it or encouraging it. But they were faced with a very confused situation and all they wanted was that the matter be determined.

That is all I have.

Trial Examiner Lindner: Before we proceed with you, Mr. Tobriner, I think we might take a short recess.

(Whereupon a short recess was taken.) [150]

Trial Examiner Lindner: The hearing is in session. You may proceed, Mr. Tobriner.

Mr. Tobriner: This argument will treat three independent points. First, a chronology of the events that occurred; second, the procedural irregu-

larities that are fatal to the Regional Office's case; third, the substantive failures in this case.

To begin with, the sequence of events. Originally, Local 22382 was a Federal Union directly chartered by the American Federation of Labor covering the cannery workers in the Modesto area. Thereafter, in accordance with the practice and procedure of the American Federation of Labor, the jurisdiction of the Federal Union was assigned to the International Union which the Executive Council felt covered that jurisdiction. At the meeting of the Executive Council of the American Federation of Labor taking place April 30 to May 8, 1945, the Council ruled that the jurisdiction over cannery workers should be assigned to the International Brotherhood of Teamsters on the basis that the Teamsters had jurisdiction over the warehousemen and the warehousemen in the canneries therefore belonged to the Teamsters, and rather than split the unions in the cannery field, that the entire jurisdiction be awarded to the International Brotherhood of Teamsters.

Thereafter, as is shown in Respondent's Exhibit No. 1, [151] on May 8th the International representative of the Teamsters notified the Scientific Nutrition Corporation of this award of the Executive Council. The American Federation of Labor, through its President, William Green, appointed a trustee over Local 22382 to make sure that the assignment of the workers was properly carried out. That appointment was made on or about May 10th.

Mr. Flanagan requested of the existing officers of 22382, that is, Mr. Tomson and some of the other officers, that they turn over to him the assets and properties of 22382. Upon their refusal to do so, a suit was instituted in the week commencing May 30, 1945, to the Superior Court in and for the County of Stanislaus. By reason of that order the headquarters of 22382 were locked pending the hearing of the order to show cause.

The hearing took place some ten days thereafter. The assets, the properties, the funds and monies of 22382 were turned over to Mr. Flanagan as trustee.

Finally, the case was heard at trial in the month of September, 1945, and a final order was made assigning the headquarters, assets, properties and funds to Mr. Flanagan as trustee on behalf of the American Federation of Labor taking over 22382.

In accordance with the award of the American Federation of Labor, the International representative of the International [152] Brotherhood of Teamsters did demand of the Scientific Nutrition Corporation that they recognize the jurisdiction of the Teamsters. That has been testified to in this case. It is true that some of the people in the AFL, that is, in 22382, were dissatisfied with the award of the American Federation of Labor, and some of them, we believe a minority, attempted to set up a separate union which was known as Cannery and Food Process Workers Union of Modesto Area, which in turn attempted to affiliate with the Council, the Pacific Coast Council of Cannery and Food

Process Workers Union, which in turn attempted to get a charter from the Seafarers' International Union.

On April 26, 1945, the American Federation of Labor wired to President Lundeborg of the Seafarers' International Union that it had no jurisdiction over the cannery unions, and on August 10, 1945, Mr. Lundeborg, the President of that union, informed the American Federation of Labor that "whatever charters may have been issued by affiliates have been withdrawn at my direction."

Therefore, there is no organization of Cannery and Food Process Workers Union affiliated with the Seafarers' International Union. Although some remnants of that union attempted to set up independent unions not affiliated with the SIU, those independents have now gone out of existence, and I think the testimony disclosed, were not active in this [153] picture here after the month of August or September. The proof of that is that the final election which was held in October between the CIO and AFL, independents got a scattered 100 votes out of some 18,000-odd cast.

Trial Examiner Lindner: The independents were included on the ballot, is that correct?

Mr. Tobriner: That is correct.

Such is the chronological story back of this picture that affects this Pacific employer here.

I now will treat of this specific case. In all candor, and with a high regard for the Regional Office here and its usual vigilance in seeing to it that cases it believes have a foundation are quickly heard and

disposed of, I submit that the Regional Office is not too serious in its contention in this case. The facts bear out the certainty that this case has very little foundation to it.

In the first place, if the Regional Office did seriously regard this case, it never would have let this one-year period intervene between the time of this alleged discharge and its present action. Certainly, a case that merits consideration is not allowed to sleep so that an employer, if he were guilty, would find himself charged with one year's back pay. That is not the usual practice of this Regional Office and that is why I say that is proof the Regional Office should know that this case has no [154] foundation whatsoever.

Aside from that irregularity, I point to the peculiar nature of the charge. The charge which has been brought against us here is a charge filed by FTA-CIO. FTA-CIO, as the testimony shows, was not even in the picture when this alleged discharge was supposed to have taken place on June 22, 1945. When the Trial Examiner asked the counsel for the Board as to how he did link up the present charge of FTA which alludes to this discharge and the present case, Mr. Tillman replied that in substance, FTA could be hurt by the possibility that a discharge could recur in the future; that this one discharge set a pattern and that this must have been known, I think he said "well known" at the time of the election.

I concur with Mr. Tillman in those remarks. If it is true that this set a pattern, and if it is true that

FTA were hurt in some manner by this discharge, and therefore had a basis for this charge here, it certainly would have been known at the time of the election. It would have either objected to the election or it would have filed objections which it would have pressed after the election.

Neither of those situations eventuated. As a matter of fact, in the first place I have great difficulty in seeing how one discharge, and an isolated one occurring in April of 1945, could set a pattern for an election occurring in [155] October of that year. But aside from that, we have the complete answer to Mr. Tillman's position in the fact that the CIO did file objections to this election of October, 1945, and did thereafter withdraw them. I cite to the Trial Examiner the Supplemental Decision and Order in this Bercut-Richards Packing Company case, footnote 2 and particularly footnote 3, reading as follows:

“The CIO also filed objections with respect to elects and two of the independents companies but has since withdrawn them with the statement that they were ‘insubstantial.’ ”

The file will show that objections to the election were filed by the FTA-CIO by its attorney, Bertram Edises, for Gladstein, Grossman, Sawyer and Edises, on October 27, 1945, in the matter of Scientific Nutrition Corporation, Case No. 20-R-1464, and those objections which will be shown in the file are the ones to which this footnote alludes, were the ones withdrawn. So how FTA-CIO now, six months

later, can come in and claim on the charge that by reason of a discharge occurring one year prior that they were prejudiced in some way on an election when they have already withdrawn those objections as is shown in the Supplemental Decision of the Board, I do not know.

But we need not rely only on that for the procedural irregularities which completely determine this case. If the Board is trying to make a case for 8 (5) here they have [156] failed because they have shown no request for reinstatement. I asked the witness if he ever went back and asked for his job. He replied, "No." There is nothing in the record whatsoever to show any request or demand for reinstatement. There is no showing in the record of any lack of employment after the alleged discharge. There is no showing of any wages lost. There is no showing in the record whatsoever from a procedural standpoint, of a discharge case.

So, procedurally based upon the failure of a charge by the Cannery and Food Process Workers Union, indeed, not only failure but the reverse side of the picture shows itself, because there was evidently some complaint or some objection made by the Cannery and Food Process Workers Union on May 19 a few days after this contract was signed, and yet this Regional Office did not proceed upon the Cannery and Food Process Workers' charge; but the record shows that that was dropped, and instead, a year later this Regional Office comes along with some other claim having previously dropped the charge founded upon the subject matter of this complaint.

The whole picture here is a rather amazing and I would say conclusive one as against the position of the Regional Office.

Trial Examiner Lindner: Mr. Tobriner, the complaint alleges that Mr. Cedar was discharged, and he testified that he was discharged on June 22, 1945.

Mr. Tobriner: Yes, that is correct. That is what it says, he was discharged under a contract entered into in May previous thereto, and this complaint alleges that there was duress or intimidation either at the time that contract was signed or immediately prior thereto.

The defense of the company is the contract permitted the discharge. The answer of the Board is that the contract found its life in discriminatory practices. The discriminatory practices were the very things complained about by the Cannery and Food Process Workers Union, and those practices never did blossom out in any kind of charge case at that time on the part of the Regional Office.

Aside from the procedural aspects of the case, I want to turn to the substantive facts. These again, I think, are conclusive.

The Board itself has given us the answer on the contract. The company defends itself on the basis of the contract. The Board has already told us that the contract is a valid contract, and a contract which will substantiate the discharge.

First, I refer to the Decision, Direction of Elections, and Order of the Board in the Bercut-Richards case. This decision was rendered on October



12, 1945. The Decision alludes to the existing contracts with the Independents. The Board rules:

“Upon the facts in the present record we shall assume the validity of the extended agreements hereinabove referred to.”

That is on page 3.

The Board, in its original Decision issued in October 12, 1945, recognized the validity of these existing contracts and said the election would be held in October of that year only for the purposes of determining a collective bargaining agency to negotiate a new contract, but recognized the validity of the existing one. It even said:

“However, any certification of representatives which may issue as a result of the elections hereinafter directed, shall be solely for the purpose of designating a bargaining representative to negotiate a new agreement to become effective upon the expiration of the existing contract.”

So the Board, inferentially, in its first decision, recognized the validity of its contract which the Regional Office now attacks.

But the Board went much further. In its Supplemental Decision and Order rendered February 15, 1946, it again recognized the validity of this very contract which is now subjected to attack, because there on page 5 the Board says:

“In this state of the record no legal aspect may be given the closed shop provision con-

tained in the current collective agreements after their expiration date.”

I emphasize the word “after.” The Board has, in the paragraph which we do consider dicta but nevertheless is there, said that the current collective agreements are to be [159] recognized until their expiration dates, but not after their expiration dates. No claim is made that this contract was continued after its expiration date. The claim now is that there was some invalidity in what the employer did during the life of the contract and prior to the expiration date.

This contract ran from March first, 1945, to March first, 1946, or thereabout.

Trial Examiner Lindner: The contract was entered into May 18, 1945, is that correct?

Mr. Tobriner: Yes, May, whatever the dates were.

Trial Examiner Lindner: Is there any expiration date on that contract?

Mr. Agee: If the parties give notice as provided by the Master Agreement, 15 days to each side; otherwise it goes on.

Mr. Tobriner: There is no expiration date then shown in the contract, and according to the Board's own decision, during its life there is no objection to its validity.

Aside now, from the Board's expression on the contract, I would like to go to the substance of the action of the parties. There are two reasons why the contract is good, aside from all points we have

mentioned here. First, the May 18 contract was entered into with the Teamsters as a successor union to 22382. The AFL had awarded jurisdiction to the Teamsters. The employer, being bound to the AFL, [160] certainly had the right if it so chose, to go along with the recognized bargaining agency and recognize the union which it assigned to have jurisdiction over these workers. But this employer made assurance doubly sure. I think it would have been enough for the employer to accept the decision of the AFL and recognize the Teamsters as the successor union, but here the employer went even further. He made sure that each of his individual employees, at least to the extent of a majority, designated the Teamsters as the union to serve as collective bargaining agency.

What more could the employer have done? Is there anything in the Act that says that an employer cannot recognize a union which shows that it holds the designation of a majority of the employees?

There was no petition filed at this time for an election. There was nothing pending before the National Labor Relations Board or its Regional Office. This is not a case where an employer, during the time that election may be pending, decides to give a contract or to take some action with respect to one or the other unions. Here no petition had been filed, so the employer was in the normal position of any employer who finds the majority of his workers coming to ask him to deal with a particular union.

There has been no showing in the record that any other union made any claim that it represented a

majority of the [161] employees. Indeed a letter was introduced by the Regional Office which said something about the Cannery and Food Process Workers Council, and I think that letter was admitted over my objection, but the letter on the face of it shows that the Council was only to act for this other union in the event that a request was made by the other union. It said that the Cannery and Food Process Workers Union of Modesto Area were members of this Cannery and Food Process Workers Council, and that they could request that Council to ask the Council to act for the union. There is no statement that any request was ever made.

Certainly, the employer was completely in the clear, first in recognizing the successor union to the union whom it had recognized for five years; and second, in recognizing the union whom a majority of its own employees had designated to be the union of their own choice.

Counsel for the Regional Office says that the Teamsters were a company-aided union and that the company assisted the Teamsters by reason of the fact that the company permitted free access of the plant to the AFL organizers and called the meeting at the plant. I would like the Trial Examiner to inspect the decision of the Trial Examiner in the Flotill Products Company case where similar claim was made by this Regional Office. In that case, the Trial Examiner found no validity to the position of the Regional Office. In that [162] case, the same claim was made, but in fact, even stronger. There it was argued that because the management per-

mitted a truck of the AFL on the premises during the election and permitted the AFL officials to go in and hold meetings, that such actions showed company assistance and discrimination.

The decision which I do not have with me of the Trial Examiner points out that those factors were not sufficient to show any company influence; that in fact at that time the company was under a contract with the AFL and therefore it was perfectly proper for AFL officials to visit the plant.

We will say here too that 22382 had a contract with the company, and under that contract there was certainly nothing wrong for AFL officials to visit the plant. Certainly I have never heard of a case or any decision in the whole law of labor relations which says that an employer commits an unfair labor practice just because he would permit an official of the union under which he is under contract to visit the plant.

Trial Examiner Lindner: Are you drawing no distinction whatsoever, Mr. Tobriner, between the International Brotherhood of Teamsters which was given a contract by this company on May 18, 1945, and Local 22382 which had previously had a closed shop contract with the company for many years?

Mr. Tobriner: Our position is, as the exhibits show, that the American Federation of Labor in which 22382 had been [163] a member assigned jurisdiction over the workers who formerly had been in 22382 to the International Brotherhood of Teamsters.

Trial Examiner Lindner: By that assignment are you now contending that there was a successorship?

Mr. Tobriner: I contend that as one basis to uphold the contract. There are two, as I said. There is one, the successor argument that the AFL had the right——

Trial Examiner Lindner: I understand your other argument that the Respondent recognized the Teamsters only after they had shown the majority of the employees signed.

Mr. Tobriner: That is right. I think either would be sufficient.

My position is that if a Federal union is a member of the American Federation of Labor, that the employer is certainly free to recognize the International Union to which that Federal Union is assigned. The Federal Union is nothing more than an organizing agency.

Trial Examiner Lindner: Do you contend that despite the fact the Federal Union may object?

Mr. Tobriner: I would not say despite the fact the Federal Union may object.

Trial Examiner Lindner: (Continuing)—to the statement of William Green or anybody else that union was being assigned to the Teamsters? [164]

Mr. Tobriner: Mr. Trial Examiner, I would not go that far in this case because that did not happen. 22382 as I brought out in cross examination of Mr. McIsaac, at no time registered any objection to going over to the Teamsters. No one in the AFL registered any objection. The only objection came

from some former officers who withdrew from 22382 and set up a rival union which became independent of the AFL.

Trial Examiner Lindner: Isn't it a fact that at or about that time, the assignment had already been made and Local 22382 was in the midst of some legal suit?

Mr. Tobriner: It was only afterwards. As I told you, what happened was: First, the assignment was made; then pursuant to it, Mr. Flanagan of the American Federation of Labor came out here and proceeded to carry out the orders of the American Federation of Labor. Some of the officials of 22382 withdrew, and I think perhaps unless there is objection I might submit a copy of the complaint so that would be absolutely clear.

Trial Examiner Lindner: I don't think that is necessary. But it occurs to me, Mr. Tobriner, that if there was no complaint whatsoever to the assignment that was made by the top officials of the American Federation of Labor of Local 22382 to the Teamsters Union, that no suit would have followed. Is that correct?

Mr. Tobriner: No, the suit that followed was because [165] we wanted to get the property of 22382. Mr. Tomson who was the Secretary refused to turn it over to the officials of the American Federation of Labor. That is what happened. He simply said "I will not turn this over until you get a court order." So we proceeded to get a court order which turned over the property.

That did not involve a jurisdictional question whatsoever. It merely involved the question of headquarters, funds and properties of 22382. So far as this record shows, I don't know anyone in 22382 who objected either to this management or to anyone else as such. I will say, certainly to this management, maybe to some other management, but I haven't run across it. Therefore this management is certainly in a position to recognize an assignment which the members of 22382 so far as it knew concurred in.

But they made a double check of making sure their employees likewise signed up with the Teamsters, so I don't see how anyone could possibly contend that contract was not founded on a valid contract with management.

Trial Examiner Lindner: Is it your contention, Mr. Tobriner, if the Respondent gave the use of its time and property as has been testified here, that they did to the Teamsters, that that is not assistance to the Teamsters?

Mr. Tobriner: My first answer to that, as I said in my argument, was that the management was under contract to [166] 22382 and as such there could be no objection whatsoever to someone coming in as an official either of the AFL or any constituent body of the AFL.

Trial Examiner Lindner: That is following up your theory of successorship?

Mr. Tobriner: Yes, that is correct. So that I think that disposes of any claim on the part of the Regional Office that that was assistance by management.



I likewise have not heard any testimony or any proof that a visiting of the plant by an official necessarily spells out assistance. The first answer I have already given, that is that it is under the contract and therefore was proper, but even so, even if there was not a contract, I don't know that management necessarily assists a union if it lends a place to meet to the employees. No showing has been made that management might not have done the same thing if another union came around. No other did come around, there is no showing any other union asked to come here and hold a meeting.

Mr. Agee: The record is undisputed that 22382 was there every day. There is no denial of that.

Trial Examiner Lindner: I am just trying to determine Mr. Tobriner's contention on that.

Mr. Tobriner: Even on the bare question of whether a management commits an unfair practice by allowing its premises [167] to be used by, let us say, two contending unions in the event there is a dispute, I fail to see that as an unfair labor practice if management says each of them can come in and talk to the workers and use the halls. I would say on the contrary, if management closed the halls to either contender, then it might perhaps interfere with the freedom of choice.

For all of these reasons I think there are a great many, I think this complaint must fail. I think it fails on many different grounds, procedural as well as substantive, and I submit the matter on that basis.

Mr. Tillman: I have a couple of statements in rebuttal.

Trial Examiner Lindner: You may proceed.

Mr. Tillman: Every one of these cannery cases it has been mentioned that the Board in the representation case determined that the CP&G contract was a valid closed shop contract and it has been necessary for the Board attorney to point out that the Board did not have inconsideration in a representation case either the validity of the contract or whether or not it was a closed shop contract. As far as this proceeding is concerned, this will be the first time that determination is made, and accordingly, no reliance can be placed upon the terminology which may have been careless, used by the Board in its representation decision.

The company pointed out in its argument that the Teamsters had obtained a majority in the election which was held in October 1945 which more or less proved that the company had not favored one union over the other. Naturally, that argument doesn't resolve the situation inasmuch as if the company had shown its hand and shown which way it preferred to go, which union it favored, the odds would tend to result in a victory for the Teamsters in the election since they were the favored union.

In response to the argument by Mr. Tobriner with regard to the procedural defects in this case, I am unable to state myself exactly what accounts for the delay of a year. There is nothing in the record to show what accounts for that delay. It may have been because the representation proceeding went ahead and got into so much work on trying to settle that matter. I don't know what is involved, but I don't think it is fair to argue that because of

this delay, without knowing what the reason for the delay was, that there is a procedural defect and that the complaint should be dismissed for that reason.

Then the further statement that the FTA-CIO was not prejudiced in this case and therefore properly could not file a charge, in that connection I know of nothing in the Act that requires that a labor union be on the scene of the unfair labor practice in order to file a charge against the company. So that the fact that the FTA-CIO did not come [169] into the picture until later is immaterial and does not procedurally make the complaint defective.

Likewise Mr. Tobriner stated that the 8 (3) employee has to demand reinstatement or that there can be no filing of unfair labor practice, 8 (3) unfair labor practice. I can't cite any cases right now off hand, but I know that matter has been settled by the Board, that it is not necessary that an employee who has been discharged come around and ask for reinstatement, nor is it necessary in a proceeding of this kind to show that there is a loss of pay or that the employee is still out of work, because those are matters which are ordinarily taken up when the compliance stage is reached.

Just to clear up one matter with respect to the stipulation as to this old charge which was filed by the Cannery and Food Process Workers Union, I gather Mr. Tobriner inferred because he stated that this charge was dismissed previous to the issuance of the complaint of the present proceeding—I don't want the record to be unclear on that—my stipulation did not state that this charge was dismissed

prior to this proceeding. In fact, I did not state when the charge was dismissed.

Mr. Tobriner: That is right.

Mr. Tillman: Frankly, as far as I know, no notice has gone out even to the Respondent yet that charge has been [170] dismissed.

Mr. Agee: I don't know of any notice. I never even heard of the charge.

Mr. Tillman: As I understand, we considered the charges together, decided to go ahead on one and forget the other one inasmuch as they both covered the same allegations.

One last statement that the Teamsters is a successor to Local 22382 in the sense that it merely stepped into Local 22382's shoes and took over the contract. Well, the testimony in this case shows on or about January 1, 1945 there was no contract between the company and Local 22382 so there was a gap in there of some months up until May 18, 1945. So we don't actually have a situation of a change in a party to an existing contract. We have a completely new contract with a completely new party stepping into the picture. The fact, no one in Local 22382 objected to the Teamsters taking affiliation over Local 22382 is not too important when we remember that the officials of 22382 after this time were appointees of William Green and acting as trustees. They were more or less bound to carry out the decree of the Executive Council of the AFL.

That is all.

Trial Examiner Lindner: Do you have anything further?

Mr. Agee: Just one thing. I referred to the testimony of Mr. Cedar that so far as he knew from the commencement of [171] his employment in 1944 by the Capolino Company, until his discharge in June of 1945, that all of the employees who were eligible were members in good standing of 22382 up until they entered into contract May 18, 1945; and I call attention to the similar testimony of Mr. McIsaac, although his personal knowledge only ran back to January of 1945, as evidence which is undisputed in the record that the company dealt with 22382 as under a closed shop contract insofar as the retaining of employees was concerned, and that they continued that same identical policy with the AFL Teamsters under the contract of May 18, 1945, and that the conduct of the parties here without any dispute in the record, as well as the contracts themselves show that a closed shop was being maintained and it was continued, it wasn't that they had dealt with 22382 in any way differently than they dealt with the Teamsters Union.

Part of this question would be a conclusion, but it stands in the record undenied and undisputed, and that was the question put to Mr. McIsaac "Did you, following receipt of the demand of June 22, 1945 from the Teamsters Union, and in accordance with your contract with them, discharge Cedar?" Of course his answer is in the record and no objection was made to the question and no dispute is here to the testimony that Mr. Cedar's discharge was under any circumstances other than those testified to by Mr. McIsaac. [172]

That is all.

Trial Examiner Lindner: Mr. Agee, Mr. McIsaac testified to a notice that was sent by the Scientific Nutrition Corporation to Local 22382, or rather by the Capolino Packing Corporation to Local 22382 that they had sold their business to the Scientific Nutrition Corporation and that henceforth any negotiations for the renewal of a contract which I assume was to be held some time prior to March 15, 1945, were to be taken up with the New York office of the Scientific Nutrition Corporation. Is that correct? Is that your understanding?

Mr. Agee: I didn't hear it quite that way. I understood him to say, I may be wrong, they would have to get the approval of the Eastern people.

Trial Examiner Lindner: That's right, either that or they would have to contact them. That is, that Mr. Capolino was not in a position to negotiate any further without the approval of the New York people.

Mr. Agee: The sense of what I got rather than the literal wording was that Capolino was no longer in a position to be the last word for the employer, and that he wanted them to know that.

Trial Examiner Lindner: That is right. What is your contention with respect to the time period between March 15, 1945, and May 18, 1945 when this contract was signed with the International Brotherhood of Teamsters? [173]

Mr. Agee: My contention is that the contract with 22382 remained in full force and effect until May 18, 1945, under the terms and the provisions of the Master Agreement.

Trial Examiner Lindner: That, despite the fact that 22382 had already been advised that until Mr. Capolino received approval to negotiate that he could not negotiate for the company?

Mr. Agee: That is correct, because the provision is one usually found in contracts that are designed to be reaffirmed from period to period.

Trial Examiner Lindner: Was there an automatic renewal in the Master Agreement?

Mr. Agee: Yes. In other words, the union can give the employer 15 days notice that it is not going on with the contract at the expiration period. The employer could do the same.

Trial Examiner Lindner: Don't you interpret what Mr. Capolino did in this case as notice to 22382 that that contract would not continue?

Mr. Agee: No, I think what he did with them was this: That he said, "Now, in negotiating with me this time as distinguished from previous years, I want you to be advised that by virtue of the purchase of my company by this corporation back East, I have to get their approval." In other words, I don't think he wanted to let the union think that he was acting in bad taste by their going along and opening negotiations in the customary period before the canning season opens March 1st of each year, and then saying "Here, you are stalling us, delaying us, not signing up with us. You are talking about sending back East. We never heard of it."

Trial Examiner Lindner: Did Scientific Nutrition Corporation make any affirmative move to authorize the automatic renewal of that contract?

Mr. Agee: I don't know, I can't answer that.

Trial Examiner Lindner: Did they authorize Mr. Capolino to automatically renew the contract?

Mr. Agee: I don't know that. I would like to state for the record, before today I never met either Mr. White or Mr. McIsaac or Mr. Capolino in my life, so these people are entire strangers to me.

Trial Examiner Lindner: Thank you.

Do you have anything further, Mr. Tobriner?

Mr. Tobriner: I do want to say on the record that Mr. Tillman's easy disposition of the decisions of the Board strike me as a little difficult to follow. I understood that when the Board made these decisions that it meant what it said, and I sure the employer took it that way too, and when they were told by the decision of the Board they had a valid closed shop contract or valid contract and they were [175] supposed to abide by them until their expiration date, certainly the Teamsters, the American Federation of Labor and I am sure the employers must have taken the word of the Board with considerable weight; and I am somewhat shocked and surprised at Mr. Tillman's statement that "while the Board might have been wrong," we don't think the Board was wrong in what it said about these existing contracts. We may not have agreed with the Board in what it said about future contracts, but that issue does not arise in this case.

We also say, particularly in view of that language, we are again particularly bothered by the fact that if there was any question about this, at least the Regional Office should have acted



promptly, not let this situation run for one year in view of these decisions, and in view of the whole picture we have here. Technically, the Regional Office may say "Well, that is not laches." I don't suppose the Federal Government is bound by any special doctrine of laches, but I believe for the good dealing for the sake of all parties involved, that is a most important element to consider.

When you think of this picture as far as this employer is concerned, the fact he was bound to AFL and took these careful steps to make sure that his workers did want the Teamsters and AFL, I think that this record is replete with a showing that the employer did not commit an unfair labor [176] practice.

Trial Examiner Lindner: Do any of the parties intend to file briefs?

Mr. Tillman: No.

Trial Examiner Lindner: Mr. Agee?

Mr. Agee: I have no intention to file a brief.

Trial Examiner Lindner: Mr. Tobriner?

Mr. Tobriner: Since we have a hearing come up the day after tomorrow, I think not.

Trial Examiner Lindner: Should any of the parties file briefs or want to file briefs, briefs shall be directed to the Trial Examiner in care of the Chief Trial Examiner, Washington, D. C., and shall be filed on or before May 24th. The hearing stands closed.

(Whereupon, at 4:40 o'clock p.m., Tuesday, May 14, 1946, the hearing in the above entitled matter was closed.)

[Endorsed]: No. 11694. United States Circuit Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. Scientific Nutrition Corporation, doing business as Capolino Packing Corporation, Respondent. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and California State Council of Cannery Unions, AFL, Intervenor. Upon petition for enforcement of an order of the National Labor Relations Board.

Filed July 23, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit:









No. 11,694

IN THE  
United States Court of Appeals  
For the Ninth Circuit

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NATIONAL LABOR RELATIONS BOARD,  
*Petitioner,*

VS.

SCIENTIFIC NUTRITION CORPORATION, d/b/a  
CAPOLINO PACKING CORPORATION,

*Respondent,*

and

INTERNATIONAL BROTHERHOOD OF TEAM-  
STERS, CHAUFFEURS, WAREHOUSEMEN  
AND HELPERS OF AMERICA, A.F.L., and  
CALIFORNIA STATE COUNCIL OF CAN-  
NERY UNIONS, A.F.L.,

*Intervenors.*

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BRIEF FOR RESPONDENT.

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IN THE

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NATIONAL LABOR RELATIONS BOARD,  
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CALIFORNIA STATE COUNCIL OF CAN-  
NERY UNIONS, A.F.L.,

*Intervenors.*

---

**BRIEF FOR RESPONDENT.**

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**STATEMENT OF THE CASE.**

**The Facts.**

At page 2 of the Board's Brief the Board states the question before the Court as follows:

“The issue in this case, namely, whether the Board properly found that respondent violated Section 8 (1) and (3) of the Act (National Labor Relations Act, 49 Stat. 449, 29 U.S.C., Sec. 151

et seq.) by rendering assistance to the Teamsters and by discharging an employee because he refused to join the Teamsters, turns upon the question whether, as respondent claims, it had a closed-shop contract with the Teamsters at the time of the discharge and the acts of assistance.”

The Board then proceeds to argue that the question is identical with an issue raised in the pending case of *N.L.R. B. v. G. W. Hume Company*, number 11,693 in this Court, in that it depends on “whether the Master Agreement was a closed shop.” This statement might well be correct if the “Green Book” or Master contract were the only measure of the contractual relationship between the parties. The record before the Court, however, and the matters presented by the Board in its Brief, raise a somewhat different question and require amplification of the facts as described by the Board. The record is without conflict on most of the material facts adduced at the hearing; the present difference between respondent and the Board results, we believe, from the Board’s failure to consider uncontroverted and highly material evidence in the record, and in the Board’s failure to make its conclusions of law dependent upon the record as a whole. Instead of submitting a complete restatement of the facts we shall set forth those which the Board has omitted from its Brief, following the outline adopted by the Board.

1. Early bargaining relations between respondent and Local 22382.

We agree with the Board's statements at pp. 3-4 of its brief that respondent made an agreement in 1941 with Local 22382, by which respondent adopted and agreed to be bound by the master contract established for the major portion of the California canning industry by California Processors and Growers, Inc., for the employers, and California State Council of Cannery Unions, for the various AFL cannery workers' unions. We likewise agree that this contractual arrangement remained in effect until the events of May, 1945. But we submit that the adoption of this "Green Book" contract, as it is commonly known, was not the total contract between respondent and Local 22382. In addition to a dues check off, which continued until the first of 1945 (Tr. 128), it was a condition of employment that all employees covered by the Green Book contract remain members in good standing in Local 22382. (Tr. 138, 141-42, 174, 198, 214.) Whether this union-shop or closed-shop condition existed as a matter of interpretation of the Green Book contract or as a collateral, verbal understanding between respondent and Local 22382 is immaterial; the fact is that such a condition existed down to May, 1945, and there is no inference that can be drawn from the record to the contrary. Such supplementary arrangements, adding conditions to the employment relationship not covered specifically by the Green Book contract, were quite common, particularly in the "independent" plants which were not affiliated with C. P. & G. An identical condition existed, for example, at Flotill Products, Inc., in Stockton, and is now be-

fore this Court in the matter of *National Labor Relations Board v. Flotill Products, Inc.*, number 11,449. The Board significantly makes no mention of this membership requirement in its analysis of the events of May, 1945.

2. The teamsters' assertion of jurisdiction over Local 22382.

As the Board notes (Brief, p. 4), Local 22382 was a Federal local union, chartered directly by the executive council of the American Federation of Labor. At a meeting of the executive council held from April 30, 1945 to May 8, 1945, the council ruled that jurisdiction over cannery workers should be assigned to the International Brotherhood of Teamsters because of existing teamster jurisdiction over cannery warehouse work. (Tr. 234.) As a result of this assignment of jurisdiction the international representative of the teamsters claimed successorship to the contractual agreement between Local 22382 and respondent by letter of May 8, 1945.

On May 10, 1945, a trustee was appointed for Local 22382 by William Green, president of the American Federation of Labor, to make sure that the assignment by the executive council was properly carried out. (Tr. 234.) Upon the refusal of the officers of Local 22382 to deliver its assets and properties to the trustee an action was commenced in the Superior Court in Stanislaus County to compel a proper transfer, and pending the hearing on an order to show cause the office of the old local was locked. Following

a final hearing an order was issued by the Court assigning the headquarters, assets, properties and funds of Local 22382 to the trustee. (Tr. 235.) Inasmuch as a contract between Local 22382 and respondent was an asset in which the local union had an interest the ultimate disposition of the law suit by the Superior Court gave full legal sanction to the executive council's assignment to the teamsters early in May, 1945.

### 3. Respondent's alleged assistance to the teamsters.

The Board has reviewed the events within the plant from May 14 to shortly after May 18.<sup>1</sup> With but minor exceptions the record presents no conflict as to what transpired during this period; where there is a conflict it has been resolved by the Trial Examiner, and we do not seek to upset his findings of fact on these matters. Our objection is to his conclusion that these events constituted a forbidden assistance to the Teamsters Union.

### 4. The discriminatory discharge of Gus Cedar.

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<sup>1</sup>In a number of instances the Board summarizes the record with considerably less objectivity than did the Trial Examiner in his Intermediate Report. For example, the Trial Examiner found (Tr. 43):

“\* \* \* After the meeting and while the employees were still in the warehouse, the Teamsters representatives went among the employees and solicited each one individually. That same afternoon the Teamsters presented signed membership applications of 13 of the employees to the respondent and demanded that the contract be signed.”

States the Board upon the same record (Brief, p. 9):

“After the speeches, the five Teamsters representatives who had attended the meeting circulated among the assembled employees, exhorted them to join the Teamsters, solicited each one individually, and succeeded in inducing 13 employees to sign membership application cards.”

As noted by the Board (Brief, p. 13) we agree that Gus Cedar was discharged because he was not a member in good standing of the Teamsters Union on June 22, 1945, and had not been theretofore. Our position is that upon the record before this Court the discharge did not constitute an unfair labor practice.

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### ARGUMENT.

#### A. THE EXECUTIVE COUNCIL'S JURISDICTIONAL AWARD OPERATED TO ASSIGN RESPONDENT'S CONTRACT TO THE TEAMSTERS' UNION.

##### 1. Respondent had a valid closed shop with Local 22382.

Whatever may have been the precise contractual relationship between the parties in the case of *N.L.R.B. v. G. W. Hume Company*, number 11,693 this Court, there is no doubt that until May, 1945, respondent required membership in Local 22382 as a condition of employment. This requirement is not questioned anywhere in the record. (Tr. 174, 198, 214, 216-17.) Even the claimant Gus Cedar, a witness called by the Board, conceded that until May 18, 1945, all employees were members in good standing of Local 22382, and he did not know of any employees prior to that date who failed to maintain membership in good standing. (Tr. 138, 141-42.) This practice, whether reduced to writing or not, was as much a condition of the employment relationship and a part of the total collective bargaining agreement with Local 22382 as were the terms of the Green Book contract which had been adopted by reference in 1941. There



can be no question that such an agreement is valid under the Act even though not reduced to writing. *Matter of United Fruit Company*, 12 N.L.R.B. 404.

**2. The Teamsters succeeded to the closed shop condition as well as to the Green Book.**

By declaring that the validity of Gus Cedar's discharge hinges on the effect of the master agreement (Board's Brief pp. 2, 13, 14) the Board in effect agrees that the teamsters succeeded to the contract held by Local 22382, for without such successorship the Board's argument would depend only on the exclusive recognition memorandum executed on May 18, 1945. (Tr. 20.) This, quite obviously, sets forth nothing concerning substantive terms or conditions of employment, let alone a requirement of union membership.

The Board does not question the existence of the Green Book contract between the teamsters and respondent. In fact, the Board states that "the single issue in this case is whether the master agreement \* \* \* was a closed-shop agreement, or, in the language of the proviso to Section 8 (3) of the Act, whether it required of respondent's employees membership in the teamsters 'as a condition of employment.' " No-where does the Board suggest that the teamsters were not a party to the Green Book contract with respondent. And inasmuch as there is nothing to indicate, by inference or otherwise, that the teamsters and respondent gave separate consideration to re-execution of the memorandum incorporating the Green Book

(or, for that matter, to the discussion of any other collective bargaining agreement), the Green Book can enter the picture on and after May 18, 1945, only upon the premise that the teamsters succeeded to the contract held by Local 22382.

But the Board omits a most substantial part of the contractual relationship from the development of its conclusion that employment was not conditioned upon union membership. The Board ignores the requirement, unquestionably existing until May 18, 1945, that employees be members in good standing of the AFL union if they were to secure or retain employment.<sup>2</sup> This requirement, as we have stated, was as much a part of the collective bargaining relationship as any section of the Green Book. There is no doubt that the teamsters intended to succeed to this condition along with the matters set out in the industry contract. In the letter of May 8, 1945, the teamsters made claim to inherit *the agreement* then in effect, and agreed that upon recognition of their "inheritance" they would "live up to *the agreement now in effect* to the latter." (Italics added.) The contractual relationship was not claimed piecemeal; it was claimed in its entirety. Upon this basis when the teamsters sent the recognition memorandum to respondent on May 17, 1945, they did not have to ask for a written

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<sup>2</sup>The Board found (Tr. 34, Sec. 3) that "The contention that the parties understood and administered the contract as requiring membership in the Teamsters, is not supported by the evidence," and that there was no closed shop agreement with respondent. In view of the foregoing discussion we submit that these findings are wholly without evidentiary support.

agreement establishing a closed—or union shop, any more than they had to request a re-adoption of the Green Book contract. They merely asked respondent to inform employees that they had to become and remain members of the Teamsters Union, instead of Local 22382, as a contractual obligation running in favor of a successor organization. It was not a proposal made to respondent calling for acceptance and the creation of a new collective bargaining agreement. It was merely a concluding step in the procedure by which the teamsters stepped into the shoes of Local 22382.

---

**B. RESPONDENT'S "ASSISTANCE" TO THE TEAMSTERS WAS REQUIRED UNDER ITS CONTRACT.**

As the Board concedes, the Green Book contract was at least a part of the contractual relationship between respondent and Local 22382, and later with the teamsters. The assignment of the interest of Local 22382 to the teamsters occurred upon the rendition of the award of May 3, 1945, by the executive council of the American Federation of Labor. Thereafter the Teamsters Union was entitled to claim the benefits of the contract, a part of which was Section 11 of the Green Book, set forth in full in the appendix to the Board's brief, pages 29-55, particularly at page 44. The first sentence in this Section (captioned "Visits by Union Officials") is as follows:

"The Employer agrees to admit to its plant at all reasonable times any authorized represen-

tative, or representatives, of the Union for the purpose of ascertaining whether or not this agreement is being observed by the parties hereto, and to assist in adjusting grievances.”

This paragraph gave teamster representatives the right to visit the plant to observe performance of the contract not only as to wages and hours, but also as to the compliance by the employer with the provisions of Section 3 (Board's Brief, pp. 31-35) relating to preference of employment and the necessity for proper application for union membership by new employees. With respect to employment of persons not having seniority in the plant, the Green Book contract obligated respondent to give first preference to unemployed union members. If such members were not available non-members could be hired, but only by making application for membership before going to work, and membership had to be completed within ten days of employment. Under Section 11 of the Green Book the teamster representatives had a right to be in the plant to see whether new employees belonged to the union, and their solicitation of membership would be a proper exercise of that right.

The Board argues that two types of activity constituted unlawful activity within the plant. First, the Board urges that the activities of the teamster representatives themselves, in addressing and soliciting the employees constituted improper conduct for which respondent is chargeable. The answer to this argument is that what the teamsters did, they did by rea-

son of their successorship to the contract, specifically under Section 11 of the Green Book. Teamster presence and conduct in the plant was no more improper than would have been such conduct by representatives of Local 22382 prior to May, 1945, particularly in the absence of a request for similar privileges by any other group.

Second, the Board argues that assistance given to teamster spokesmen by representatives of the respondent was a violation of the Act. To this there are two answers. For one, inasmuch as the teamsters succeeded to the old contract the statements attributed to Capolino and others could not have affected the result. The same issue was before the Board in *Matter of J. E. Pearce Contracting and Stevedoring Company*, 20 N.L.R.B. 1061, where the Board said (20 N.L.R.B. at 1074):

“The respondent is charged with having supported Local 1576 in two other respects. Mrs. Pearce is alleged to have told employees as they came for their wages on or about July 15, 1938, that ‘you’d better put this down in your sock because this is the last you are going to get because I have no contract with the C. I. O.’ Since this statement merely recites the consequences which flow from the respondent’s legal obligations as determined above, it cannot be said to constitute support of Local 1576. \* \* \*”

For two, the statement charged to Capolino that “if you don’t go with the teamsters they will quit delivery, the plant will be tied up and we will all be out of work” (Tr. 111, 140) is a privileged exercise

of the right of free speech because it carries no connotation that the respondent, as distinguished from the union, would exercise its economic power to shut down the plant. *Matter of Hagy, Harrington & Marsh*, 74 N.L.R.B. No. 242; *Matter of Electric Steel Foundry*, 74 N.L.R.B. No. 30.

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**C. EVEN UNDER THE GREEN BOOK ALONE, CEDAR WAS REQUIRED TO MAINTAIN MEMBERSHIP IN THE TEAMSTERS.**

Gus Cedar was first employed by respondent about June, 1944. (Tr. 100.) Under the Green Book contract as it read at that time he was required to make application for membership in Local 22382, as a new employee, before starting to work. He had to complete his membership in Local 22382 within ten days. The Board states that thereafter there was no requirement that membership be maintained as a condition of continued employment. An answer to the Board's argument has recently been given by Mr. Justice Peters, writing the opinion in the case of *Silva v. Mercier*, 82 A.C.A. 742, 187 P. (2d) 60 (petition for hearing before Supreme Court granted January 27, 1948). The views expressed in that case are equally in point here.

“The clauses of the contract in dispute are sections I and II, particularly section II. They provide:

“ ‘Section I. Recognition of the Union: The Employer hereby recognizes the Union as the sole collective bargaining agency for all employees working for the Employer and within the juris-

diction of the Union, who are, at the time of the signing of this agreement, or thereafter become members of the Union.

“ ‘Section II. Employment: All non-union milkers presently employed or hereafter hired by the Employer shall make application for membership into the Union within seven (7) days from the date of the signing of this agreement, or from the date of hiring by the Employer (whichever the case may be), and each shall become a member of the Union in good standing within thirty (30) days from the date of said hiring unless the Union’s action is delayed beyond said 30-day period. Whenever the Union is unable to furnish a milker in emergencies the Employer shall be free to provide his own emergency milker for the emergency but such milker must be replaced by a Union milker when one is available.

“ ‘Any employee suspended or expelled by the Union for violation of the Constitution and By-Laws of the Union shall, upon seven (7) days written notice being given by the Union, be laid off until such time as he shall have become reinstated in the Union.’

“ ‘It is charged in the complaint, and defendant by his demurrer admits that, at the time of filing the complaint and at the time the minute order was entered, defendant had in his employ two non-emergency non-union workers who failed to complete their membership in the union within the 30-day period specified in Section II of the contract. All notices required to be given by the union were served on the employer.’” \* \* \*

“ ‘We are here dealing with a union shop agreement, not a closed shop agreement. Fundamen-

tally, a closed shop contract requires the employer to hire only union members and to discharge non-union members. Employees, as a condition of employment, must remain union members. That is not the present contract. The union shop contract gives the employer a free hand in hiring, but requires that within a specified time, the non-union employees hired must join the union, and maintenance of such membership is a condition of continued employment. *It is quite obvious that the present contract was intended to fall within this category.*" \* \* \* (Italics added.)

Gus Cedar was required to remain in good standing with the AFL until May, 1945, by reason of the Green Book contract, and he was equally obligated to affiliate with the teamsters after the award of the executive council of the American Federation of Labor. The existence of the closed shop condition discussed above would therefore be merely cumulative as to him.

The Board takes the view that with respect to Cedar and the closed shop question the parties were operating under a contract which was so free from ambiguity as to preclude the consideration of a union membership condition under the Green Book. (Brief, pp. 22-23.) Its position on this point is rather badly shaken, however, by the fact that most of the following two pages of the brief is devoted to an explanation of the ambiguity and uncertainty created by the Board itself in its *Bercut-Richards* decision, 65 N.L.R.B. 1052. In view of the many folios of argument presented by the Board and its representatives in numerous proceedings involving this contract in which the



Board has attempted to explain its own confusion concerning the contract, it may well be that the Board's administrative tongue is in its cheek when it refers to the Green Book's "unmistakably clear terms." (Brief, p. 23, note 24.) We submit that the evidence of the closed shop practice must be considered by the Board, either as a matter of construction of the Green Book or as proof of an agreement supplemental to it. And certainly the Board is wrong in concluding that the lack of discharges for non-membership (Brief, p. 22; Tr. 198, 219) shows that membership was not a condition of employment; the fact is that because all employees maintained their membership there was no necessity to invoke the provision, until Cedar refused to comply in June, 1945.

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### CONCLUSION.

We submit that the Board's conclusions are not supported by the record.<sup>3</sup> The existence of a requirement of union membership as a condition of employ-

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<sup>3</sup>Although the Board notes that formal exceptions to the Trial Examiner's Intermediate Report were filed only by the AFL, its Brief presents the issues as though all findings of fact had been challenged by all parties. One of the points relied upon by the Board in its Statement (Tr. 80) is that the findings of fact concerning the alleged unfair labor practices "are supported by substantial evidence." All parties, furthermore, argued the Trial Examiner's conclusions in considerable detail before the Board in Washington, D.C., and it therefore appears that the Board is not attempting to invoke the rule of *NLRB v. Cheney California Lumber Co.*, 327 U.S. 385, and similar cases in which a failure to protest findings at any stage of the proceedings before the Board is held to preclude an initial attack upon them when enforcement is sought in the Circuit Court of Appeals.

ment during the relationship with Local 22382 is uncontroverted. By reason of the award of the AFL executive council of May 3, 1945, the Teamsters Union succeeded to all the rights and interest of Local 22382 in the entire contract with respondent, including the right to maintain its standing in the plant by demanding membership as a condition of employment. With respect to the activities of the teamster representatives in the plant, commencing on May 11, 1945, whatever they did was pursuant to their rights under the Green Book. The record wholly fails to show that pressure was put on seniority people who under the Green Book may have been under no obligation to affiliate with the union. In this respect the present case differs materially from authorities, such as *N.L.R.B. v. Electric Vacuum Cleaner Co., Inc.*, 315 U. S. 685, relied upon by the Board. And if the teamsters succeeded to the contractual relationship of Local 22382, the claim that the discharge of Gus Cedar constituted an unfair labor practice would fall of necessity.

We therefore urge that the petition of the Board be denied.

Dated, Oakland, California,

November 1, 1948.

Respectfully submitted,

J. PAUL ST. SURE,

EDWARD H. MOORE,

*Attorneys for Respondent.*

No. 11,694

IN THE

United States Court of Appeals  
For the Ninth Circuit

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NATIONAL LABOR RELATIONS BOARD,  
*Petitioner,*

vs.

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INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
CHAUFFEURS, WAREHOUSEMEN AND HELPERS  
OF AMERICA, A.F.L., and CALIFORNIA STATE  
COUNCIL OF CANNERY UNIONS, A.F.L.,  
*Plaintiffs in Intervention,*

vs.

NATIONAL LABOR RELATIONS BOARD,  
*Defendants in Intervention.*

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BRIEF FOR INTERVENORS.

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NOV 3-1948

PAUL P. O'BRIEN,



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OF AMERICA, A.F.L., and CALIFORNIA STATE  
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*Plaintiffs in Intervention,*

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NATIONAL LABOR RELATIONS BOARD,  
*Defendants in Intervention.*

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**BRIEF FOR INTERVENORS.**

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**I. STATEMENT OF JURISDICTION.**

The jurisdiction of this Court is invoked by petitioner, as we understand its position, under Section 10 (c) of the National Labor Relations Act (49 Stat. 449, 29 U.S.C. 160 (c)) hereinafter called the "Act". The Act was amended by the Labor Management Relations Act of

1947. (Pub. L. No. 101, 80th Cong., 1st Sess., June 23, 1947, 29 U.S.C.A. Sec. 141 et seq. (1947 Supp.).)

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## II. STATEMENT OF THE CASE.

This case involves the construction of a collective bargaining agreement between the Capolino Packing Corporation, a subsidiary small cannery of the Scientific Nutrition Corporation, and its employees. No great or new principles of law are necessary for disposal of the issues. The intervenors and the respondent contend that the letter of their written agreement constituted a closed-shop agreement. The Board states that it does not. The intervenors and the respondent assert that they were justified in interpreting and administering it as a closed shop agreement. This the Board also denies.

For many years prior to the single event which produced this case, the parties to the contract, agreeing upon its meaning and administration, proceeded in industrial accord. Indeed, this harmony continued thereafter, despite the shadow thrown upon it by the Board's order. However, the Board would now distort the involved contract into an instrument which the parties proposed and conceived to be an agency of inevitable discord. If the Board's position is correct, the parties contemplated and, indeed, guaranteed for themselves recurrent and unresolvable work stoppages.

The Board's invocation of the Wagner Act to create this minor but certain source of industrial strife and unrest is a strange distortion of its role.

It is the more strange because the Board originally conceived and tried the case, not upon the theory that the contract constituted an open shop agreement, but upon the thesis that the agreement had been unlawfully procured by illegal assistance of the employer. The open shop contention came as an after-thought of the Board.

Unsound and distorted, the contention grew out of a curious history. The charge, upon which this complaint rests, was filed by a C.I.O. union which did not even enter the picture until almost one year after the alleged unlawful discharge occurred. Instead the charge was filed by an organization which became defunct three months thereafter (R. 170), and the charge itself was dropped. It was this organization that had originally petitioned for an election, but, in October, 1945, had lost the election, the employees choosing the intervenor as their collective bargaining agency. (Record, N.L.R.B. v. C. W. Hume Co., Vol. II, p. 612.) On April 22, 1946, the FTA-CIO, a second rival organization in the industry, filed a charge alleging that the respondent had committed unfair labor practices as to the first contending labor union at a time before FTA-CIO had even come upon the scene, and five months prior to the election; indeed, ten months prior to the filing of the charge! (R. 3-5.) It was this dilatory charge which gave delayed birth to the present proceedings and consequent order of the Board sought to be enforced here.

We believe the Board has been less judicial than punitive. To sustain its belated complaint it would ordain a retroactive decree destroying a collective bargaining contract and establishing industrial misunderstanding and

possible strife. The Board would thus use the Wagner Act to work a result as unjust from a moral standpoint as it is unsupportable procedurally and substantively.

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#### A. THE FACTS.

##### 1. **Early bargaining relations between the respondent and Local 22382.**

The history of this case begins in 1941 when the Capolino Packing Corporation entered into an agreement with a local union of the A. F. of L. designated as Federal Local 22382. (R. 43, 214-215.) The contract which the company consummated with this union on March 1, 1941, ran from year to year unless notice of intention to modify was submitted at least fifteen days prior to the end of the calendar year. (Pet. Brief p. 47.)

During the period 1941-1945 the company continued to bargain only with Local 22382. While the master contract entered into between the employers' association, California Processors and Growers, Inc., and the union's representative, the California State Council of Cannery Unions (R. 43, 198, 214-215), set the pattern for its collective bargaining contract, Capolino Packing Corporation retained its independent status, stipulating to accept such terms as the master contract provided and settling all disputes and grievances locally. Respondent did not become a member of the California Processors and Growers (R. 174); nor is there any evidence that it was aware of the history of the master agreement which the parties utilized as a prototype for the contract at the small plant at Atwater, California.

The relations between the parties to the contract were cordial (R. 179) and, in the memory of the witnesses, every employee was a member in good standing in the A.F.L. Local 22382. (R. 138, 141-142, 174-175.) The Capolino Packing Corporation had even instituted a union dues check-off system (R. 128, 152) at the request of the A.F.L. Local (R. 151) and maintained this check-off until early in 1945. (R. 152, 216, 223.)

In 1944 Capolino sold his plant to the respondent (R. 43-44; 152, 215, 220) but the respondent continued to operate the plant with Capolino as manager and maintained the collective bargaining agreement in effect. (R. 215, 216, 217.) The dues check-off system was, however, discontinued in January, 1945. (R. 223.)

**2. The Teamster succession to the bargaining status of Local 22382.**

During this period Local 22382 remained an unaffiliated federal local union of the American Federation of Labor (R. 43, 107-108, 220, 234) but during the early months of 1945, there developed a movement among the membership of some cannery locals to obtain the status of an international union or affiliation with an international union of the American Federation of Labor.

As a result, at the meeting of the Executive Council of the American Federation of Labor April 30-May 8, 1945, the Council ruled that jurisdiction over the cannery workers should be assigned to the International Brotherhood of Teamsters. (R. 234.) To implement the transfer the American Federation of Labor, through its president, on or about May 10, 1945, appointed a trustee, charged

with the duty of effecting an orderly succession. (R. 234.) Concurrently with the award of jurisdiction to the Teamsters, the International representative of the Teamsters notified the Scientific Nutrition Co. (Mr. Capolino, specifically) by letter dated May 8, 1945, that the Teamsters had succeeded as the governing agency of Local 22382 and requested recognition, promising in turn to administer the existing agreement "to the letter." (R. 186-187.)

Some time in this period a group of discontented workers who objected to the Teamster affiliation formed an organization known as the Cannery and Food Process Workers' Union. This organization evidently held meetings in April, 1945, (R. 207) and attempted to affiliate with a group known as the Pacific Coast Council of Cannery and Food Process Workers Union. The latter organization in turn attempted to affiliate with the Seafarers' International Union. (R. 235-236.)<sup>1</sup> However, on April 26, 1945, the American Federation of Labor notified the Seafarers' International Union that it had no jurisdiction over the cannery unions (R. 236) and the above-mentioned Cannery and Food Process Workers' Union, in September or October, 1945, (R. 154), thereafter, became defunct.

### **3. Respondent's behavior subsequent to the Teamsters' succession to Local 22382.**

Very likely the entire controversy would not have eventuated if the respondent had complied, without question, with the Teamsters' letter of May 8th, 1945. However, an

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<sup>1</sup>The sequential background of the dispute was narrated by counsel for Intervenor at the request of the Trial Examiner. (R. 221, 223.)

odd circumstance gave him pause. The secretary-treasurer of Local 22382, a Mr. Tomson, a leading figure in the attempt to lead the membership of the Local into affiliation with the Cannery and Food Process Workers Union, sent a letter, dated May 11, 1945, to the Capolino Packing Corporation. The letter, purportedly written in Tomson's representative capacity as organizer for the "Cannery and Food Process Workers' Council of the Pacific Coast", advised the Company that the Council was prepared "upon request of the Local Union to represent the Local Union and the employees in your plant in collective bargaining matters", after first stating that the employees had "terminated their membership in Local 22382 and have \* \* \* organized under the name of Cannery and Food Process Workers' Union of Modesto \* \* \*". (R. 205, 206.)<sup>2</sup>

After a "trivial conversation" between McIsaac, plant superintendent of the Capolino plant, and Capolino, they decided "to put the issue before the employees, tell them to make some decision so (respondent) could get down and operate our plant reasonably." (R. 207, 208.) Accordingly, on the following Monday the employees were assembled and notified of the receipt of the letter from the Teamsters. (R. 178.) The exact words of Capolino during this meeting are in dispute. McIsaac testified:

"He \* \* \* asked the employees to get together and decided what union they would like to affiliate

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<sup>2</sup>As we have noted, supra, "The Cannery and Food Workers Council" expired (if indeed it ever existed) after the disavowal of jurisdiction by the Seafarers International Union. (R. 235-236.) The concern of respondent over the presumptuous claim in this letter was, therefore, unnecessary.

with, that he was afraid this was going to lead to a lot of trouble and possibly shut the plant down; that all he was primarily interested in was to keep the plant running, that he did not care who they affiliated with or joined; if they joined up with the devil it would be all right with him. All he wanted was peace amongst his employees and to operate the plant.” (R. 178, 179.)

Cedar, the discharged employee, testified:

“He said that he had received notice that the Teamsters Union were going to take over the plant, and there was nothing we could do about it, and he wanted to know what we are going to do about it.” (R. 111.)

“\* \* \* he also said, ‘If you don’t go with the Teamsters they will quit delivery, the plant will be tied up and we will all be out of work’.”<sup>3</sup> (R. 111.)

The letter received from the Teamsters was posted in the plant and later in the day four representatives of the Teamsters called at the plant and inquired whether the Company intended to carry out the agreement. The Company informed them that they would not do so until proof of their designation by the employees was supplied. (R. 181.) The Teamsters requested permission to address the employees and the permission was granted. McIsaac assembled the employees and informed them:

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<sup>3</sup>The Trial Examiner credited the testimony of Cedar (R. 47) despite the fact that he was hazy on the date of the meeting and contradicted details of his testimony in later examination, i.e., although Cedar testified, as above quoted, that Capolino had stated he had “received notice that the Teamsters Union were going to take over \* \* \*”, Cedar later stated in response to the question, “Was any reference made to any letters from the Teamsters?”: “Not at that time”. (R. 112.)



“\* \* \* there were representatives of the Teamsters Union who would like to talk to them, but it was entirely up to them whether they wanted to listen to it. Whatever they wanted to do was entirely up to them. They could feel free to stay and listen to it or go on back to their work. It wasn't necessary for them to take any action, do anything, merely listen.” (R. 181, 182.)

This testimony was not contradicted by Cedar.

During this second assemblage of the employees, officers and members of Local 22382 stated their reasons for the affiliation with the Teamsters and the advantages of the affiliation (R. 183) and later solicited cards evincing approval of the succession from the individual employees. (R. 116, 117.) It must be pointed out that there would have been no need for this solicitation had the respondent recognized the succession upon demand of the International representative; indeed, the fact that within two days the Teamsters presented signed applications from a clear majority of the employees (R. 184) is strongly indicative of the fact that respondent's refusal to recognize the Teamsters upon written application was born of an unnecessary caution.

The presentation of proof of the Teamsters' clear majority satisfied even the careful respondent, and, on May 18, 1945, it recognized the Teamsters as the exclusive bargaining representative under the current bargaining agreement. (R. 20, 189.)

Upon execution of the agreement with the Teamsters, McIsaac assembled the employees and verbally informed them that it had signed the contract (R. 211, 212) and a

few days later the local officials of the Union came to the plant and showed the contract to the employees. (R. 208, 212.)

On June 22, 1945, the Teamsters served written demand upon the respondent to discharge Gus Cedar for failure to join the Union. The discharge for this cause was stated to be "in accordance with the terms of the agreement between your company and Local 748". (R. 191, 192.) Upon receipt of the letter, Cedar was discharged for failure to join the Union. (R. 102-103.)

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#### **B. THE BOARD'S DECISION AND ORDER.**

The Board held that the Cedar discharge violated the Act because the Company did not have a closed-shop contract with the Teamsters.

The Board does not controvert the fact that the Teamsters succeeded to the contract of Local 22382 (R. 32, 33) but reduces that agreement to an open-shop contract, and, thus contends that by holding the above described meetings and expressing his views, respondent assisted the Teamsters in recruiting new members.

It is obvious, of course, that if Local 22382 did have a closed-shop contract, as intervenors contend, no unlawful acts were committed. Once the Board grants that the Teamsters were the lawful bargaining representative of the employees, it must hold that the Company was under an obligation to recognize them. The Company's permission to address the employees to obtain proof of this status is merely an attenuated performance of this ob-

ligation. The Company's verbal statement to the employees that the Company had signed a contract with their authorized representative is nothing more than an academic announcement of the fulfillment of a statutory duty. The Company's acquiescence in the Teamsters' exhibition of the contract to the employees during a rest period is no more than a recognition of a customary and salutary right of the bargaining agent.

In view of the decision of the Board, therefore, the statements attributed to the Teamsters to the effect "If you boys (employees) don't sign up, you will be all sitting out in the park because this plant is going to be closed" (R. 50; 121, Petitioner's Brief, p. 10) and "\* \* \* either you sign up or else \* \* \* You know, out you go" (R. 51, 121) have absolutely no relevance to this proceeding for enforcement of the Board's order. There is not a shred of evidence that the statements were heard by the respondent's supervisors and cannot, therefore, be attributed to him. And, indeed, even if the statements were made with the *express approval* of the respondent they would be privileged if, as intervenors contend, respondent had a closed shop contract with Local 22382—since the Board does not controvert the fact that the Teamsters inherited the contract by virtue of the award of jurisdiction.

The same observation may be made of the discharge of Cedar on June 22, 1945, for failure to sign up with the Teamsters. (R. 50-53.) If the Teamsters had a closed-shop agreement with the respondent on this date, the discharge in pursuance of the agreement was simply the fulfillment of a statutory obligation.

*Nevertheless*, upon the finding that the agreement acquired by the Teamsters by virtue of the award of jurisdiction did not constitute a closed shop contract and upon the foregoing facts, the Board found that respondent rendered assistance to the Teamsters, in violation of Section 8 (1) of the Act (R. 33) and discharged Cedar in violation of Section 8 (3) and (1). (R. 34.)

The Board's order requires the respondent to cease and desist from encouraging membership in the Teamsters or any other organization, to reinstate Cedar with back pay and to post the usual notices of compliance. (R. 35-38.)

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### III. STATEMENT OF THE ISSUES.

The Board has properly confined the issues to a determination whether the respondent had a "closed-shop" agreement at the time the alleged acts of assistance and the discharge of Cedar occurred. The Board contends the acts were unlawful because the respondent did not have a closed-shop agreement during this period and tacitly admits the acts were lawful if it did. So narrowed, the issues may be succinctly stated:

(1) Does an agreement between an employer and a union providing:

(a) If the employer should have any non-union employee in his employ the employees may, without violating the agreement, refuse to work,

(b) The employer shall request evidence of membership in the Union of all employees and notify the

Union of any employee not presenting such evidence, and

(c) The Union shall notify the employer of any delinquent or suspended Union member or non-Union employee, and

(d) All new employees shall be hired through the Union, or required to join the Union within ten days, constitute a "closed-shop" agreement within the meaning of the National Labor Relations Act and

(2) If not a closed shop agreement by strict construction, is such an agreement sufficiently ambiguous to warrant the parties in regarding these provisions as collectively conditioning continued employment upon union membership and in administering the agreement as a "closed-shop" agreement.

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#### IV. ARGUMENT.

##### A. THE BOARD'S FINDING THAT RESPONDENT AND THE INTERVENORS DID NOT HAVE A CLOSED-SHOP CONTRACT IS UNTENABLE.

1. The inclusion in the collective bargaining agreement of the provision permitting union members to lay down their tools if non-union members are employed is decisive evidence that the collective bargaining agreement between respondent and intervenors constituted a closed-shop contract.

In the instant case, the parties to the agreement utilized an ancient provision to denominate the existence of a closed-shop and, indicative of the overriding importance attached to this issue of union security, placed the provision as prefatory to all other union security pro-

visions in the contract. Section III of the agreement provides:

*“It is recognized that the refusal of Union members to work with non-Union employees who are within the jurisdiction of the Local Union shall not constitute a violation of this agreement \* \* \*.”* (Appendix B, Petitioner’s Brief, p. 31.)

The inclusion of this provision is, we submit, decisive of the question whether the parties to the agreement executed a closed-shop agreement: *this provision is the strongest concession that an employer can grant to assure the Union of maintenance of closed-shop conditions.*

The provision authorizes work stoppages for the enforcement of a closed-shop provision, and has been so recognized by commentators.<sup>4</sup> Indeed, it permits enforcement of the clause by the method of work stoppage which is even more drastic than a strike.<sup>5</sup>

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<sup>4</sup>“In a few industries, where bargaining is generally conducted with employers’ associations, the strike has been accepted as a means of enforcing the agreement against recalcitrant members of the association. In such cases, *strikes against individual employers are permitted for enforcement purposes* and do not constitute a violation of the association agreement.” (Italics supplied.) “Union Security Provisions”, *Bulletin No. 686*, U.S. Department of Labor, Bureau of Labor Statistics, U.S. Government Printing Office (1942), p. 162. Thus, the Bureau of Labor Statistics notes that an employer association, in permitting employees to refuse to work if non-union persons are employed, assents to the enforcement of such an agreement as a closed shop.

<sup>5</sup>The distinction between a refusal to work and a strike is demonstrated by the following language from *New York Labor Relations Board v. Union Club of City of New York*, 268 App. Div. 516, 52 N.Y. Supp. (2d) 74 (1944): “What occurred here did not amount to a strike in the ordinary sense of the term. The employees did not leave the premises of the employer, but remained thereon. They did not choose to abandon their work until their demands were met.” This case was reversed on other grounds in *New York State Labor Relations Board v. Union Club of City of New York*, 295 N. Y. 917, 68 N.E. (2d) 29 (1946).

Embodied only in the contracts of Unions having a long history of the strictest closed-shop conditions, it provides a *modus operandi* which would place an employer in the disastrous position of subjection to economic ruin if non-Union members are employed or retained. Clearly in the absence of such a closed-shop enforcement provision, the employees would not have this right to lay down their tools.<sup>6</sup> Nor can it be successfully maintained that an employer would *authorize* this cessation of operations during working hours and consequent increase in operating costs if he contemplated hiring or retaining a non-Union employee. Substantively, the Board is arguing that the employer, in effect, contemplated the retention or hiring of non-Union employees and concurrently authorized the Union employees—his entire working force—to lay down their tools if he did. The absurdity of ascribing such a schizophrenic intention to the bargaining parties is manifest.

Yet this absurdity is compounded and rendered more grotesque when the bargaining agreement is construed in conjunction with the provisions of the National Labor Relations Act and decisions thereunder.<sup>7</sup> Having author-

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<sup>6</sup>Thus in arbitration proceedings involving the United Automobile Workers and the Allis Chalmers Manufacturing Company arising out of the refusal of an employee to work alongside a prompter of a rival union and deserter from the CIO, arbitrator Lloyd Garrison after finding the bargaining agreement did not provide for a closed-shop, established the principle:

“A member of a labor organization (*in absence of closed-shop*) has no right to refuse to work with another man because the other man is a member of another labor organization.”

*Awards by Special Arbitrators, Rules on Union-Company Relations*, 9 Labor Relations Reference Manual 833 (1941).

<sup>7</sup>It goes without saying that “the contracting parties are presumed to have had in view the statute upon the subject, and it must

ized the employees to lay down their tools if non-Union employees are employed, the employer would be powerless to terminate the stoppage by discharging the non-Union employee since such a discharge, according to the Board, would constitute an unfair labor practice under the doctrine of the *Star Publishing Company* case.<sup>8</sup> Nor could the employer discharge the idle employees and terminate the employer-employee relationship: the employees laid down their tools at his express and written authorization! Yet, according to the Board, the parties intended nothing less than this absurdity.

It is hornbook law that a contract is not to be construed to yield an unusual and extraordinary result. It is equally axiomatic that a contract will be presumed to have been drawn for the attainment of lawful objectives. The Board, by cavalierly dismissing this vital provision, has ascribed to the bargaining parties the desire to subject the respondent's plant to the hazard of economic destruction eventuating upon the whim of a single employee who fails to retain his Union membership, for the Board denies the employer any lawful means of terminating the consequent work stoppage.

The provision in question is a more stringent Union security clause than the usual closed-shop provision. In the event of a breach by the employer of a standard, explicit, yet bare, promise to maintain a closed-shop, the employees could:

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be held to enter into and become a part of their contract upon that subject, if the contract can be so construed". *Brown v. Kling*, 101 Cal. 295, 35 Pac. 995 (1894).

<sup>8</sup>*N.L.R.B. v. Star Publishing Co.*, 97 F. (2d) 465 (CCA 9), enforcing 4 N.L.R.B. 498.



- (a) Waive the breach.
- (b) Take legal action to enforce the agreement or obtain compensation for the breach.
- (c) Strike to compel enforcement.

Under the present provision, the employees have the above alternatives and also the privilege of conducting a work stoppage until the non-union employee is dismissed. Insofar as a body of judicial decision exists to the effect that a work stoppage, as distinguished from a strike, to compel performance of a collective bargaining agreement is unlawful,<sup>9</sup> the inclusion in a collective bargaining agreement of employer authorization for such action is, indeed, far more advantageous to the Union than a less enforceable albeit more explicit promise that no non-Union employee will be retained.

2. **The mechanics set forth in the agreement to implement the provision enabling the union members to lay down their tools if non-union members are employed are consonant only with the existence of a closed-shop agreement.**

That the parties contemplated that this provision should operate as a closed-shop provision is clearly indicated by the mechanics set forth in the agreement by which the provision was to be enforced. Quoting further from Section III (a):

“(a) It is recognized that the refusal of Union members to work with non-Union employees who are within the jurisdiction of the local Union shall not

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<sup>9</sup>See: *New York Labor Relations Board v. Union Club of City of New York*, 268 App. Div. 516, 52 N.Y. Supp. (2d) 74 (1944) (see footnote 5, supra); *C. G. Conn, Ltd. v. National Labor Relations Board*, 108 Fed. (2d) 390 (CCA 7) (1939).

constitute a violation of this agreement, *provided*, however, that *before any strike action, job action, or other direct action* is taken on this account, the local Union will submit the matter for adjustment as provided in Section 8 hereof. *In order to aid in the prompt adjustment of such matters, the Union shall furnish its members with a clearance card, dues book or other evidence of paid-up membership, and when employees who are on the seniority lists, as defined in Section 9 hereof, are called to work, the employer will request that such evidence be presented by those who have it, and will keep a record, which will be available to the Union, of all employees who do not present such evidence. Similarly, the Union will from time to time, when such information is available, notify the employer of the names of delinquent or suspended members, or other non-Union employees, according to Union records.*" (Italics supplied.)

Paraphrasing the Board's essential contention that the above provision is consistent with the creation of an open shop, we find the employer not only *authorizing* economic action against his plant but also actively *assisting* in discovering grounds for commencing it! The employer must "keep a record" of employees who fail to join the Union, and he must make that record "available to the Union". When the record shows non-membership of a single employee, all employees are entitled to stop working. Can it be seriously contended that an employer would not only *authorize* a work stoppage but bind himself to the duty of furnishing the Union with the grounds for its commencement if his contract with the Union were intended to prevent the discharge of the offending employee, the source of the difficulty?

These provisions for checking and cross-checking for "evidence of paid-up membership", implementing the right to lay down tools if non-Union employees are retained, comprise nothing less than an implicit recognition of the requirement that such Union card be obtained and maintained by the employee. Obviously, unless the parties to the agreement contemplated the discharge of any non-Union employee, the mere determination of non-Union status would not "aid in the prompt adjustment" of a threatened exercise of the contractual privilege to cease work. The only possible method of "adjustment" and avoidance of strife is the discharge of the non-Union employee.

3. **The inclusion of a preferential hiring clause and the institution of a voluntary check-off are additional strong indicia that the parties executed a closed-shop agreement.**

Paragraph two of Section 3 (a) of the Agreement between the respondent and the intervenors provides:

"The employer shall be the sole judge of the qualifications of all of its employees, subject to appeal as provided in Section 8 hereof, but in the selection of new employees the employer will give preference of employment to unemployed members of the Local Union, provided they have the necessary qualifications and are available when new employees are to be hired. 'New Employees', for the purpose of this agreement, are defined to be persons who are not on the seniority list of the hiring plant, as defined in Section 9 hereof, even though they may have been employed previously by said plant. As a basis for preferential consideration as new employees as aforesaid, unemployed members of the Local Union shall be required to present a clearance card from the

Local Union evidencing the fact of their paid-up membership. (If such Union members are not available for such employment, the employer may hire any person not a member of the Union provided that such person will be required to file an application for membership in the Local Union before being put to work. Upon filing such application he shall receive from the Union a written statement that he has made such application, which statement shall be taken up by the employer and returned to the Union when the applicant is put to work. It is further understood that such person must become a member of the Local Union within ten (10) days after his employment, and that the Local Union will not unreasonably refuse to accept such person as a member.)”

These provisions requiring Union membership of all new employees and also providing for preferential hiring through the Union are the usual ancillary provisions of closed-shop agreements. As stated by the Department of Labor:

“Provisions establishing some form of closed or preferential Union shop are frequently accompanied by provisions outlining the procedure to be followed in hiring new employees \* \* \*.

“A time limit may be applied to the provision for hiring through the Union office. Thus, if sufficient persons cannot be furnished by the Union within a specified number of hours, the employer is allowed to secure workers from other sources \* \* \*. *If a closed shop exists, workers hired in the open market must specify their willingness to join the Union, and are usually given a few days after employment within which to apply for membership.*”<sup>10</sup>

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<sup>10</sup>“Union Security Provisions”, supra, footnote 4, p. 27.

Similarly, although provision for a check-off was not incorporated in the agreement, the voluntary institution and maintenance of a check-off system for a considerable period of time is additional persuasive evidence that the parties believed they were administering a closed-shop agreement. As stated by the Department of Labor:

“The check-off provision has no inherent connection with the type of recognition in existence. *As a rule, however, Unions which are well enough established to obtain a check-off system are likely also to have a closed or Union Shop.*”<sup>11</sup>

The inclusion of provisions that are common ancillaries to closed-shop agreements and the institution of a voluntary check-off are, counsel submit, strong and persuasive evidence that the parties contemplated, executed and administered an agreement providing for a closed-shop and rendered membership in the Union a condition of continued employment.

4. **Any doubt whether the contract constituted a closed-shop should be resolved in accordance with the parties' interpretation and administration of the agreement.**

In view of the foregoing analysis of the common practice in the negotiation of collective bargaining agreements and in view of the inclusion of the closed-shop provision permitting the Union employees to lay down their tools if non-Union members are employed, we submit that the Board must distort the agreement to construe it as an open shop. Giving it every benefit of doubt, the most the Board could contend would be that the agreement was not

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<sup>11</sup>Ibid., p. 29.

clear. In that event, the declared interpretation and administration of the agreement as a closed-shop agreement would resolve the ambiguity.

The Board has placed major reliance upon one of its own decisions to buttress its findings that the agreement in question fails to satisfy the proviso to Section 8 (3) of the act. The case in question, *Matter of Iron Fireman Manufacturing Company*, 69 N.L.R.B. 19 (1946), involved an agreement incorporating a *single* Union security provision:

“All new employees who are employed by the employer shall be given a trial period of thirty days or less. If found satisfactory at the expiration of thirty days, they shall make application to the Union.”

Upon this single provision, the trial examiner held that, *in view of the parties' interpretation of the agreement* as constituting a closed shop, it would be so regarded by the Board. The Board refused to adopt this position, holding: (a) The provision fails to require the employee to become a member of the Union; (b) the provision fails to require the employee to remain a member of the Union; (c) even if the clause were regarded as sufficient to constitute a closed-shop, the employee in question had been discharged prior to the expiration of the thirty-day period.

In the present case, in addition to an express requirement that all new employees must become members of the Union, there are interrelated provisions for determining the Union status of *all* employees, a preferential hiring clause, and the overriding provision that Union mem-

bers may refuse to work if non-Union members are employed. The agreement is not, therefore, comparable to the agreement in the *Iron Fireman* case and cannot be constricted to the confines of that decision.

A more comparable Board decision is *Matter of M & J Tracy, Inc.*, and *Inland Boatmen's Union*, 12 N.L.R.B. 316 (1939). In the mentioned case, the only Union security provision was the phrase: "All members of party of second part (the Union) to be given preference of all work. \* \* \*" The Board, after declaring the contract to be ambiguous, finally resolved the ambiguity as providing for a Union shop.

Although we believe that the respondent's contract is unequivocal in its declaration of a closed-shop agreement, we submit that even if we assume its ambiguity, the parties' adopted and reasonable construction of the contract must control. Any doubts as to the operative effect of the agreement should be resolved in accordance with their interpretation and administration of the agreement.

The Board, itself, before advancing its present position as to the contract, has engaged in considerable vacillation and contradiction as to its meaning. Its decisions, predicated on an examination of the Master Agreement, manifest a pendulum of interpretation that has made a full swing. Thus in its supplemental decision and order, rendered February 15, 1946, in the Bercut-Richards case, the Board, referring to the Master Agreement, stated:

"In this state of the record, no legal aspect may be given the *closed-shop provision contained in the current collective agreements* \* \* \*." (R. 229.)

The complaint issued by the Board on April 23, 1946, which is the very basis for this entire proceeding, describes the contract as one requiring membership in the Union as a condition of employment:

“On or about May 18, 1945, the respondent entered into a contract with the Teamsters, recognizing that organization as the exclusive collective bargaining representative of the respondent’s employees, and requiring membership in the Teamsters as a condition of employment.” (R. 8.)

During the course of oral argument in the instant case, the Trial Examiner expostulated:

“Are you drawing no distinction whatsoever, Mr. Tobriner, between the International Brotherhood of Teamsters, which was given a contract by this company on May 18, 1945, and *Local 22382 which had previously had a closed shop contract with the company for many years?*” (R. 245.)

The Trial Examiner, in the Intermediate Report, to buttress his findings of unfair labor practices, *placed major reliance* on the position that the contract between the Teamsters and the respondent failed because of unlawful assistance, urging the proposition as to the alleged open shop nature of the contract only as a secondary and supplementary contention. (R. 59.)

Refusing to pass upon the major position of the Trial Examiner, the Board, in the present case, relying exclusively on the second point, found the respondent’s conduct unlawful *solely* on the ground that “*neither Local 22382 nor the Teamsters had a closed shop agreement*”. (R. 33.)



In view of its own record of uncertainty, the Board is in no position to assert that the agreement is “unmistakably clear” and cannot be construed as other than an open shop. In any event, it is elementary that when the meaning of the language of a contract is doubtful the acts of the parties performed under it afford one of the most reliable clues to their intent.<sup>12</sup>

That the parties regarded the contract as establishing a closed shop is manifest from an examination of the record. As stated by respondent’s superintendent: “The employees coming under that contract were required to maintain good standing in the Cannery Workers Union.” (R. 174.) Again, respondent’s superintendent indicated that this interpretation was based on the agreement in question. (R. 198.) That the Union regarded the contract as constituting a closed shop is amply evidenced by the letter requesting the dismissal of Gus Cedar:

“\* \* \* This man has refused to become a member of this Union and under the terms of our contract he is subject to dismissal \* \* \*” (R. 191-192.)

The Board rejected this evidence as “unsupported” (R. 34, n. 3) although there is no testimony or evidence in conflict with the parties’ statement other than the assertion of Gus Cedar, the CIO witness, that he was not aware of any requirement that members of the Union were to maintain their membership in the Union. Cedar’s statement, however, must be regarded in the light of his subsequent admission that he knew little about the contract with the respondent or the position of the Union. (R. 141,

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<sup>12</sup>See: *Hill v. McKay*, 94 Cal. 5 (1892); *Rockwell v. Light*, 6 Cal. App. 563 (1907); *Whitney v. Aronson*, 21 Cal. App. 9 (1913).

152.) That the Board may not reject evidence on mere suspicion or inference is amply indicated by decisions up-setting the rulings of the Board.<sup>13</sup>

Thus, the basic position of intervenors is established by an examination of the agreement and a determination that the parties actually provided for a closed shop, or, in the alternative, a scrutiny of their administration and interpretation of the agreement. The agreement between respondent and intervenors made membership in the Union a condition of employment within the meaning of the proviso to 8 (3).

**5. The Board has not followed its doctrine of strict construction in previous proceedings.**

Woven into the fabric of the Board's argument is a thread of innuendo to the effect that the closed-shop provision in a collective bargaining agreement must be written in express, unequivocal and standard language. It must be initially recognized, however, that in the instant agreement the phrase in question permitting Union members to lay down their tools was incorporated in the agreement at a time when the language of collective bargaining agreements was still in a formative stage.<sup>14</sup>

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<sup>13</sup>See: *National Labor Relations Board v. McGough Bakeries Corp.*, 153 Fed. (2d) 420 (C.C.A. 5) (1946); *Interlake Iron Corp. v. National Labor Relations Board*, 131 Fed. (2d) 129 (C.C.A. 7) (1942).

<sup>14</sup>"Union Agreement Provisions", supra, footnote 4, the first sizeable collection of union security clauses, was issued in 1942. The Bureau of National Affairs did not commence its "Collective Bargaining and Negotiations" service until 1945. Early cases before the Board indicate that parties frequently believed they were writing a closed-shop agreement although the language they employed only provided for preferential shop. See: *Matter of Ansley Radio Corporation and Local 1221, Electrical and Radio Workers*

Furthermore, the Supreme Court has tacitly recognized the validity of *oral* agreements for a closed shop<sup>15</sup> and, indeed, the Board has construed as "closed-shop agreements" written collective bargaining contracts *providing only for preferential hiring* when the parties, in good faith, regarded the agreement as containing a closed-shop provision.

Thus in *Ansley Radio Corporation and Local 1221 United Electrical and Radio Workers of America*, 18 N.L.R.B. 1028, the Board, refusing to declare a preferential hiring agreement as insufficient to constitute a closed-shop agreement in view of the parties' declared construction of their contract, stated:

"Effectuation of the purposes and policy of the Act requires that in such instances the determination of whether the respondent has engaged in an unfair labor practice should not depend upon a fact which is contrary to the understanding of the employer and all persons concerned \* \* \*" (18 N.L.R.B. at 1031.)

Again, in *Matter of General Furniture Manufacturing Company and Furniture Workers Union Local 1007*, 26 N.L.R.B. 74 (1940), the written agreement provided:

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*of America*, 18 N.L.R.B. 1028 (1939); *Matter of General Furniture Manufacturing Co. and Furniture Workers' Union Local 1007*, 26 N.L.R.B. 74 (1940) discussed infra pp. 27-28. The instant union security provisions were first incorporated in the agreement in 1941.

<sup>15</sup>See: *National Labor Relations Board v. Electric Vacuum Cleaner Co.*, 315 U.S. 685, 62 S.Ct. 846 (1942), wherein the Court discussed at length whether the parties had "abandoned" an oral closed shop contract. The Board has explicitly held that an oral agreement is sufficient to satisfy the proviso to 8 (3) of the Act. *United Fruit Co. and International Longshoremen and Warehousemen's Union*, 12 N.L.R.B. 404 (1939); *Taylor Milling Co. and Avery Smith and James L. Wykes*, 26 N.L.R.B. 424 (1940).

“In filling vacancies or hiring new help, the COMPANY agrees to give preference to members of the UNION. If UNION men who are satisfactory to the COMPANY are not available, the COMPANY may then hire whom they desire providing such employees join the UNION within thirty (30) days of being given employment.” (26 N.L.R.B. at p. 79.)

Quoting from the findings of the Board in the mentioned case:

“The respondent and Local 2097 contend that by Article V of the contract the respondent was obligated to require Union membership of all its employees, those in its employ at the time the contract was entered into as well as those hired thereafter. *The provision, on its face, however, appears to refer to only preferential hiring of new or additional employees through the Union and does not appear to establish a closed shop as the respondent and Local 2097 contend.* However, clear and convincing proof was adduced at the second hearing that the parties *mutually intended and agreed* in the agreement reached by them \* \* \* and which they supposed was expressed in the instrument then executed that the respondent require of all production workers then in its employ and thereafter union membership as a condition of employment \* \* \*” (26 N.L.R.B. at p. 79.)

The Board concluded, on page 80:

“Under these circumstances the contract will be considered for the purposes of this proceeding as a closed-shop contract, as if it expressly set forth the respondent’s undertaking.”

If the Board is willing to regard an unequivocal written preferential hiring agreement as constituting a closed shop, intervenors are at a loss to understand the Board's sudden position that an agreement providing for preferential hiring, supplemented by provisions for inquiring into and determining the Union status of all employees *and* containing the traditional closed-shop provision permitting Union employees to refuse to work if non-Union employees are employed—an agreement regarded by the parties as a closed-shop agreement—is insufficient to satisfy the proviso to Section 8 (3) of the Act.

In any event, the cases cited by the Board (Petitioner's Brief, p. 23) as to the alleged immateriality of the conduct and interpretation of the parties hardly apply in view of the Board's established principle in the above cited cases that the agreement will be construed to effectuate the intention of the parties, regardless of the language employed.

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**B. THE OTHER CONTENTIONS OF THE BOARD ARE  
WITHOUT MERIT.**

The Board has relied upon a series of cases commencing with *N.L.R.B. v. Cheney California Lumber Co.*, 327 U.S. 385 (1945) as precluding this Honorable Court from inquiring into the validity of the order of reinstatement of Gus Cedar and the propriety of all portions of its order to which the respondents and the Teamsters failed to make specific exception.

The fallacy in the argument is manifest. Section 10 (e) of the Act provides, *inter alia*:

“No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the Court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to *questions of fact* if supported by substantial evidence on the record considered as a whole shall be conclusive.” (*Italics added.*)

The finality of the Board’s rulings and order must be bottomed on *findings of fact*. The issue in the present case is not an issue of fact but an issue of law—the construction of a contract. As stated in *Aluminum Co. of America v. N.L.R.B.* (CCA-7), 159 Fed. (2d) 523 (1946), wherein the Board had construed a closed-shop contract as inoperative and then sought enforcement of a reinstatement order:

“It is an elementary rule not requiring citation of authorities that the construction and meaning of a written contract is a question of law. \* \* \* The problem in the instant case does not center about the drawing of inferences from surrounding circumstances, but instead it requires an interpretation of the language of the addendum itself \* \* \*”

After examining the addendum and holding the closed-shop contract to be in effect, the Court rejected the Board’s contention that the issues involved findings of fact, deemed inapplicable cases now advanced by the Board<sup>16</sup> and refused enforcement, stating:

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<sup>16</sup>“The cases cited by the Board, National Labor Relations Board v. Electric Vacuum Cleaner Co., *supra*; Wallace Corp. v. National Labor Relations Board, 323 U.S. 248; National Labor Relations Board v. Link-Belt Co., *supra*, admittedly are inapplicable if the

“It is apropos at this point to note that the Board’s order appears to be founded upon a misinterpretation of the Act and thereby fails to effectuate its policies. Among other things the Act was designed to strengthen the Unions in their dealings with the employers. The closed-shop proviso is an example. But while the Act protects individual Union members from discriminatory discharge *it strains the imagination to see where in the Act Congress has intended that discharges made pursuant to a valid Union security contract should in themselves constitute an unfair labor practice.* It would appear that the effect of this order is that the Board is seeking to protect a recalcitrant member from his Union’s discipline. The Supreme Court, we believe, anticipated this situation in *Virginia Electric & Power Co. v. National Labor Relations Board*, 319 U.S. 533, when it said:

‘It (Board’s judgment) should stand unless it can be shown that the order is a patent attempt to achieve ends other than those which can fairly be said to effectuate the policies of the Act.’ ”

That an order of the Board must be denied enforcement if bottomed on an erroneous conclusion of law is likewise implicit in the decision in *N.L.R.B. v. Cheney Lumber Co.*, supra, wherein Justice Frankfurter, speaking for the Court, deemed the decision in the case inapplicable “if the Board has patently travelled outside the orbit of its authority so that there is, legally speaking, no order to enforce.” (p. 388.)

To maintain that even if the contract between the Teamsters and the respondent constituted a closed shop agree-

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discharge is pursuant to an existent closed-shop agreement untainted by any unfair labor practice.” *Aluminum Co. of America v. National Labor Relations Board*, supra, at p. 526.

ment, the order requiring the reinstatement of Gus Cedar must stand is, counsel submits, an attempt by the Board to "achieve ends other than those which can fairly be said to effectuate the policies of the Act."

Nor is this a case wherein the parties to the proceeding failed to raise the issue of the construction of the contract.

It was raised by respondents in their answer (R. 21) and in oral argument by respondent (R. 230, 253) and by the Teamsters. (R. 241, 256.) The argument was considered by the Trial Examiner (R. 53-58) and by the Board. (R. 34.) The parties have, therefore, complied with both the spirit and the letter of Section 10 (e) of the Act.

Nor may the Board obtain any satisfaction from the cases establishing the principle that even if the parties had a closed-shop contract, employer discrimination is not permissible where it would result in a denial to employees of the fundamental freedom to select representatives and the protection against discrimination, which the Act as a whole was designed to afford. (See Petitioner's Brief, p. 32.) The case of *Wallace Corporation v. N.L.R.B.*, 323 U.S. 248 (1944), cited by the Board (p. 32), involved a discharge of an employee at the request of the Union although the employer knew that the employee was denied membership in the Union because of his activities on behalf of a rival Union. In the instant case, there is nothing other than the standard enforcement of a closed shop agreement. The employee had failed to retain his membership in the Union although membership in the Union was a condition of employment.



**CONCLUSION.**

The Board's petition in this case rests upon an erroneous construction of the written agreement between respondent and intervenors. The agreement, on its face, constitutes a closed-shop agreement, but, even if it carries any latent ambiguity, the ambiguity should be resolved in accordance with the interpretation and conduct of the parties. The Board's attempt to deny vitality to the agreement and to dismiss the parties' conduct under it in proving the proper interpretation of the agreement is, counsel believes, an unsupportable doctrine.

We submit that the logical construction of the agreement, as well as the underlying postulates for industrial peace, require the dismissal of the petition.

Dated, San Francisco, California,

November 1, 1948.

Respectfully submitted,

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*Attorneys for Intervenors.*



No. 11694

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**In the United States Circuit Court of Appeals  
for the Ninth Circuit**

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**NATIONAL LABOR RELATIONS BOARD, PETITIONER**

*v.*

**SCIENTIFIC NUTRITION CORPORATION, D/B/A CAPOLINO  
PACKING CORPORATION, RESPONDENT, AND INTERNA-  
TIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,  
WAREHOUSEMEN AND HELPERS OF AMERICA, A. F. L.,  
AND CALIFORNIA STATE COUNCIL OF CANNERY UNIONS,  
A. F. L., INTERVENORS**

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**ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD**

---

**BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD**

---

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DEC 15 1947

PAUL P. O'BRIEN,

CLERK



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# In the United States Circuit Court of Appeals for the Ninth Circuit

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No. 11694

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

SCIENTIFIC NUTRITION CORPORATION, D/B/A CAPOLINO  
PACKING CORPORATION, RESPONDENT, AND INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,  
WAREHOUSEMEN AND HELPERS OF AMERICA, A. F. L.,  
AND CALIFORNIA STATE COUNCIL OF CANNERY UNIONS,  
A. F. L., INTERVENORS

---

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD

---

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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## JURISDICTION

This case comes before the Court upon petition of the National Labor Relations Board for enforcement of its order issued against respondent on December 13, 1946 (71 N. L. R. B. 1003; R. 35-38), following the usual proceedings under Section 10 (c) of the National Labor Relations Act (49 Stat. 449, 29 U. S. C., Sec. 151, *et seq.*).<sup>1</sup> Jurisdiction of this Court rests upon

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<sup>1</sup> Relevant portions of the Act appear in the Appendix A, *infra*, pp. 27-28. The Board's decision and order were issued prior to, and present no question affected by, the amendments to the National Labor Relations Act by Section 101 of Title I of the Labor Management Relations Act, 1947, effective August 22, 1947 (Pub. L. 101, 80th Cong., 1st Sess., June 23, 1947).

Section 10 (e) of the Act. The unfair labor practices occurred at respondent's plant in Atwater, California, within this judicial circuit.<sup>2</sup>

#### STATEMENT OF THE CASE

##### A. The facts

The issue in this case, namely, whether the Board properly found that respondent violated Section 8 (1) and (3) of the Act by rendering assistance to the Teamsters<sup>3</sup> and by discharging an employee because he refused to join the Teamsters, turns upon the question whether, as respondent claims, it had a closed-shop contract with the Teamsters at the time of the discharge and the acts of assistance. Since the collective bargaining contract upon which respondent and the Teamsters rely is the same Master Agreement (*infra*, pp. 3-4) involved in *N. L. R. B. v. G. W. Hume Company, et al.*, No. 11693, in which the Board has already filed its brief with the Court, the question herein is identical with, and will be determined by the answer to, one of the questions presented by the *Hume* case, namely, whether the Master Agreement was a closed-shop contract.

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<sup>2</sup> No question of the Board's jurisdiction is presented since respondent admits it is engaged in commerce within the meaning of the Act (R. 42; 99). Respondent, a New York corporation, is engaged at its plant at Atwater, California, in the business of canning and processing fruits and vegetables. The annual sales from the Atwater plant total approximately \$1,500,000, of which approximately 90 percent constitutes sales to points outside the State of California (*ibid.*).

<sup>3</sup> International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. L.



The essential facts, as found by the Board,<sup>4</sup> are not disputed by respondent.<sup>5</sup>

#### 1. Early bargaining relations between respondent and Local 22382

In 1941, the Capolino Packing Corporation, operated by J. Capolino, entered into a collective bargaining agreement with Cannery Workers Union Local 22382, a Federal Labor Union of the American Federation of Labor, herein called Local 22382 (R. 43; 214-215). By this agreement, the parties adopted and agreed to be bound by a collective-bargaining contract, known as the Master Agreement,<sup>6</sup> which had been executed by the California Processors and Growers,

<sup>4</sup> The Board adopted the primary findings of fact set forth in the Trial Examiner's Intermediate Report (R. 32, 42-53) and, with certain modifications and exceptions, also adopted the Trial Examiner's conclusions and recommendations (R. 32-37, 53-69). In the following statement of the facts, references preceding the semicolon are to the Board's findings, and following references are to the supporting evidence.

<sup>5</sup> Respondent filed no exceptions to the Trial Examiner's Intermediate Report (R. 32), and raised objections to certain of the Trial Examiner's legal conclusions, but not to his fact findings, in oral argument before the Board. The Teamsters filed exceptions to the Intermediate Report, and argued orally before the Board, raising objections to certain of the Trial Examiner's conclusions and recommendations and to the findings of fact with respect to certain of respondent's acts of assistance to the Teamsters, but not to the finding that respondent discharged Employee Cedar because he refused to join the Teamsters (R. 27-30, *infra*, p. 11).

<sup>6</sup> The Master Agreement was not introduced as an exhibit in the record in the instant case. Because of a scarcity of copies at the hearing and in view of the fact that it had been made an exhibit in a number of other Board cases involving the contract, the parties agreed that the Board was sufficiently supplied with copies so that its formal introduction would not be necessary in the instant case (R. 196-197). For the convenience of the Court we

Inc.,<sup>7</sup> and the California State Council of Cannery Unions, as the representative of the various A. F. L. cannery workers' unions in the state (R. 43; 174, 215).<sup>8</sup>

Capolino continued to operate under the Master Agreement until early in 1944, when he sold his plant to respondent (R. 43-44; 152, 215, 220). Respondent continued to operate the plant as the Capolino Packing Corporation, with Capolino as manager and, until the advent of the intra-A. F. L. jurisdictional dispute here involved (*infra*, pp. 4-6), maintained the same collective bargaining relations with Local 22382 that Capolino had (R. 43-44; 214-217, 220).<sup>9</sup>

## 2. The Teamsters' assertion of jurisdiction over Local 22382

During the period discussed above, Local 22382 was not affiliated with any of the various A. F. L. international unions, but was what is known as a Federal Local Union, affiliated directly with the A. F. L. itself (R. 43; 8, 100, 107-108, 137, 220, 234). On May 3, 1945, however, the A. F. L. transferred jurisdiction

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have printed the Master Agreement in Appendix B hereto (*infra*, pp. 29-55). There is, of course, no question as to its authenticity. It appears as an exhibit in the printed record in the *Hume* case, *supra* (see *Hume* Record, pp. 615-648).

<sup>7</sup> An association of west coast packing concerns, hereinafter referred to as the "C. P. & G."

<sup>8</sup> Capolino Packing Corporation was not a member of the C. P. & G., but, like a number of other non-member cannery employers, adopted the Master Agreement, which is also referred to in the record as the "C. P. & G." Agreement and the "Green Book" Agreement (R. 43; 174).

<sup>9</sup> The only apparent change was the discontinuance of the check-off of union dues by respondent; thereafter, Local 22382 collected dues through the shop steward (R. 128, 152). However, the dues check-off had always been voluntary and not pursuant to the Master Agreement (R. 141, 152).

over Local 22382, and other similar A. F. L. locals in the west coast canning industry, to the Teamsters (R. 44-45; 176, 186-187, 220, 234). This action of the A. F. L. met with determined opposition on the part of some of the officers and members of Local 22382 (R. 45-46; 138, 147-148, 220-222, 235). After the transfer of jurisdiction was announced, certain of the former officers and members of Local 22382 withdrew from the Local and established an independent union known as the Cannery and Food Process Workers Union of Modesto Area (herein called the Cannery Workers Union), affiliated with the Cannery and Food Process Workers Council of the Pacific Coast (herein called the Cannery Workers Council) (R. 45-46; 158, 200, 205-206). The Cannery Workers Union, in competition with the Teamsters, sought to establish itself as the bargaining representative of respondent's employees (R. 45-46; 130-136, 144, 149-151, 152, 158, 162, 200, 205-206).<sup>10</sup>

Despite the opposition of the employees, the A. F. L. carried out its jurisdictional program and the Team-

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<sup>10</sup> In 1945, the Cannery Workers Union petitioned the Board for certification as the collective bargaining representative of respondent's employees and of the various cannery industry employees the Teamsters were seeking to represent. And on October 15, 1945, the Board issued its Decision and Direction of Election and included the Cannery Workers Union on the ballot (R. 171-172). *Matter of Bercut-Richards Packing Co., et al.*, 64 N. L. R. B. 133, 143, 144. See, also, Supplemental Decision and Order, 65 N. L. R. B. 1052, 1061. Subsequently, the Board found that the Cannery Workers Council and its affiliates were "either defunct or no longer interested in the proceedings" and determined to omit them from the ballot in further elections. The *Bercut-Richards* case, Second Supplemental Decision, 68 N. L. R. B. 605, 609.

sters immediately sought to take over the bargaining arrangements theretofore established between Local 22382 and various cannery enterprises, including respondent. Thus, on or about May 8, 1945, the Teamsters notified respondent, by letter, that the Executive Council of the A. F. L. had awarded it jurisdiction over the cannery workers and asserted that, thereby, it had "inherit[ed] the agreement now in effect between your company and the American Federation of Labor and the Local Cannery Workers Union," i. e. Local 22382 (R. 44-45; 176, 186-187).

Similarly, by a letter dated May 11, 1945, the Cannery Workers Council informed respondent that the A. F. L. award in favor of the Teamsters, and the "effort \* \* \* to transfer all members of Local No. 22382 to that Union [was] without regard to the wishes of the members," and that those members had expressed their dissent by having "organized themselves under the name of Cannery and Food Process Workers' Union of Modesto Area \* \* \* under and by virtue of a Charter issued to it by Cannery and Food Process Workers' Council of the Pacific Coast." Challenging the legality of the Teamsters' attempt to "substitute" itself as a party to the collective-bargaining contract between respondent and Local 22382, and asserting its own claim to the status of collective-bargaining representative, the Cannery Workers Council declared that "the Local Union as an autonomous organization is the representative in collective bargaining matters of all the employees in the plant except supervisory employees" (R. 45-46; 200-206).

## 3. Respondent's assistance to the Teamsters

Faced with these conflicting claims to the position of exclusive bargaining representative of its employees, respondent, as the Board found (R. 32-33, 53-55, 58), failed to maintain the neutrality imposed by the Act, and threw its active support on the side of the Teamsters. Thus, on May 14, 1945, the Monday following the receipt of the letters from the Teamsters and the Cannery Workers Council, announcing the conflicting claims of the two unions (*supra*, pp. 5-6), respondent assembled its employees in the warehouse at 8:30 in the morning, during working hours (R. 46; 110-111, 177).<sup>11</sup> Present at this meeting, and representing respondent, were Manager J. Capolino, Plant Superintendent McIsaac who was also in charge of labor relations (R. 46; 173, 177), Assistant Plant Superintendent Stewart (*ibid.*), Spafford, foreman of the warehouse (*ibid.*), and White, the assistant manager at the time (R. 46; 177, 207).<sup>12</sup> Capolino informed the employees that the Teamsters "were going to take over the plant," and that "there was nothing \* \* \* [the employees] could do about it." (R. 46; 111, 140). Capolino further warned the employees that if they did not join the Teamsters, the Teamsters would stop deliveries

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<sup>11</sup> At this time, the plant was not engaged in processing or canning operations and only the "regular" employees, of whom there were 26, were present (R. 46; 142, 178). During the active canning seasons this small staff was augmented by "seasonal" employees (*infra*, p. 16, n. 18).

<sup>12</sup> After Capolino's death in November 1945, White became the manager of the plant (R. 128, 207).

to the plant, causing a cessation of operations and a resultant loss of employment, and declared that "there is nothing else we can do \* \* \* but \* \* \* go with the Teamsters" (R. 33, 46; 111, 140, 178-179). Capolino referred to the letter respondent had received from the Teamsters (R. 111, 178), and although Employee Gus Cedar<sup>13</sup> asked for time in order to contact Local 22382 and "find out what it was all about" (R. 46-47; 112, 179), Capolino made no mention of the letter respondent had received from the Cannery Workers Council nor of the Council's representation claim (R. 112). Immediately following the meeting, respondent posted the Teamsters' letter in the plant (R. 198-199).

About two hours after this meeting, representatives of the Teamsters came to the plant and asked respondent for an answer to their letter of May 8, 1945 (R. 47; 179-181). Capolino and Superintendent McIsaac declared that respondent intended to do nothing until such time as the employees designated the Teamsters as their representative (R. 47; 181). When the Teamsters' representatives asked permission to address the employees in the plant, however, the permission was promptly granted (*ibid.*). Again, during working hours, the employees were assembled at respondent's warehouse (R. 47; 112, 181, 211-212). Superintendent McIsaac informed them that the purpose of the meeting was to permit representatives of the Teamsters to address them (R. 47; 181-

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<sup>13</sup> The discriminatory discharge of Cedar will be discussed below (*infra*, pp. 11-12).

182). McIsaac then turned the meeting over to the Teamsters, and both Superintendent McIsaac and Assistant Superintendent Stewart remained at the meeting, while the Teamsters' representatives addressed the employees (R. 47-48; 113, 182). King, one of the Teamsters' representatives who had formerly been an official of Local 22382 (R. 47; 116, 146, 183), spoke to the employees, and after outlining the reasons for his own change in affiliation and the benefits to be derived from joining the Teamsters, asked the employees when they were going to sign up with the Teamsters (R. 47-48; 114-115, 183). Torreano, another Teamsters' representative, spoke along the same lines (R. 48; 183). After the speeches, the five Teamsters' representatives who had attended the meeting circulated among the assembled employees, exhorted them to join the Teamsters, solicited each one individually, and succeeded in inducing 13 employees to sign membership application cards (R. 48; 116-117).

That same afternoon the Teamsters presented the 13 signed application cards to respondent in confirmation of its status as the bargaining representative of the employees and demanded that a contract be signed (R. 48; 184, 210). Respondent refused to sign on the ground that the Teamsters had not shown that they represented a majority of the 26 employees at the plant (*ibid.*). A few days later, the Teamsters met this objection by producing three or four additional signed application cards (*ibid.*). After checking the validity of the signatures on all the application cards, respondent, on May 18, 1945, entered into an agree-

ment with the Teamsters, recognizing that union "as the sole collective bargaining agent for all the employees of the Employer covered by the master agreement" (R. 48; 20-21, 189, 210-211). Shortly thereafter, respondent again assembled its employees in the plant, and Superintendent McIsaac informed them that a contract had been signed with the Teamsters, that respondent would henceforth be bound by the contract, and that "it was too late now to do anything about it" (R. 49-50; 122, 211-212). Respondent did not show the contract to the employees at this time, but allowed the Teamsters' representatives to do so at another meeting held a few days later at respondent's warehouse (R. 50; 118-121, 208, 212-213). At the latter meeting the Teamsters' representatives were again granted permission to talk to the employees, and did so in the presence of Superintendent McIsaac and Assistant Superintendent Stewart, this time during a rest period (R. 50; 119-120, 208, 212). On this occasion, the Teamsters' representatives remarked that some of the employees had not yet signed up with the Teamsters, and warned the employees, "If you boys don't sign up, you will be all sitting out in the park because this plant is going to be closed" (R. 50; 121). After the meeting the Teamsters' representatives again circulated among the employees and solicited them individually (R. 50, 51; 121). And when Employee Cedar said that he did not intend to do anything "right now" about joining the Teamsters, he was told, "Well, either you sign up or else \* \* \* You know, out you go" (*ibid.*).



## 4. The discriminatory discharge of Gus Cedar

Neither respondent nor the Teamsters dispute the validity of the Board's finding, adopting that of the Trial Examiner, that respondent discharged Cedar on June 22, 1945, because of his refusal to join the Teamsters (R. 34, 50-53).<sup>14</sup> The detailed findings are as follows

Since June 1944, Cedar had been a "regular" employee in the boiler room and a member in good standing of Local 22382 (R. 50-51; 100-101, 107, 128, 137-138, 141). When the Teamsters' representatives, with respondent's permission, were soliciting the employees in the plant during working hours in May 1945 (*supra*, pp. 8-10), Cedar was solicited and, finally, was warned by the representatives to "either sign up or else \* \* \* out you go" (*supra*, p. 10). In the latter part of May, Superintendent McIsaac warned Cedar that his refusal to join the Teamsters was "causing me to have to let you go" (R. 51-52; 124, 193). On June 22, 1945, while he was working in the plant, Cedar was approached by two Teamster representatives who asked what his intentions were as to signing up (R. 52; 102-103). When Cedar replied that he was not going to join the Teamsters, one of the representatives told him he was fired and to report to the office for his time (*ibid.*). When Cedar reported to respondent's office, he was given a termination notice which stated that he was discharged because of his

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<sup>14</sup> As we have noted (*supra*, p. 3), respondent filed no exceptions to the Intermediate Report of the Trial Examiner, and the Teamsters did not except to this finding.

“Refusal to join Union (A. F. of L.) Teamsters” (R. 53; 103–104, 106). At the time of the hearing, Cedar had not worked for respondent since his discharge (R. 53; 154).

### **B. The Board's decision and order**

Upon the foregoing facts, and upon its finding that respondent did not have a closed-shop contract with the Teamsters (R. 33, 59–61), the Board found that respondent rendered assistance to the Teamsters, in violation of Section 8 (1) of the Act (R. 33, 54–55), and discriminatorily discharged Employee Cedar, in violation of Section 8 (3) and (1) (R. 34, 61.) The Board's order requires respondent to cease and desist from the unlawful conduct in which it has engaged and, affirmatively, to offer Cedar reinstatement with back pay, and to post in its plant appropriate notices of compliance with the Board's order (R. 35–38).

### **SUMMARY OF ARGUMENT**

The Board properly found that respondent rendered assistance to the Teamsters and discharged Employee Cedar because he refused to join the Teamsters, at a time when respondent did not have a closed-shop contract with the Teamsters, and that, therefore, respondent's conduct was in violation of Sections 8 (1) and (3) of the Act.

1. The terms of the Master Agreement did not condition employment upon union membership.

2. The other contentions of respondent and the Teamsters are without merit.

## ARGUMENT

**The Board properly found that respondent rendered assistance to the Teamsters and discharged Employee Cedar because he refused to join the Teamsters, at a time when respondent did not have a closed-shop contract with the Teamsters, and that, therefore, respondent's conduct was in violation of Section 8 (1) and (3) of the Act**

Upon this record there is, of course, no question but that respondent rendered assistance to the Teamsters. The Board's findings that respondent assembled its employees in the plant during working hours for the purpose of permitting Teamster representatives to address the employees and solicit them to join the Teamsters, and that respondent itself, through its top representatives at the plant, urged the employees to join the Teamsters and warned them that they faced a plant shutdown and resultant unemployment unless they did so, are supported by unassailable evidence (*supra*, pp. 7-10). And the propriety of the Board's further finding that respondent discharged Employee Cedar because he refused to join the Teamsters is, apparently, conceded by the parties (*supra*, pp. 3, 11). In any event, the latter finding is not open to attack before this Court, because neither respondent nor the Teamsters excepted to the identical finding by the Trial Examiner (R. 27-30, 34, 50-53, 61).<sup>15</sup>

It goes without saying, furthermore, that unless respondent had a closed-shop contract with the Teamsters at the time of its acts of assistance to the union,

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<sup>15</sup> *N. L. R. B. v. Cheney California Lumber Co.*, 327 U. S. 385, 388-389; *Marshall Field & Co. v. N. L. R. B.*, 318 U. S. 253, 255; *N. L. R. B. v. Kinner Motors, Inc.*, 154 F. 2d 1007 (C. C. A. 9); *N. L. R. B. v. Cutler*, 158 F. 2d 677 (C. C. A. 1).

including the discriminatory discharge of Employee Cedar, respondent's conduct was in violation of Section 8 (1) and (3) of the Act, as the Board found (R. 32-34). *N. L. R. B. v. Electric Vacuum Cleaner Co., Inc.*, 315 U. S. 685, 692-695; *N. L. R. B. v. Waterman Steamship Corporation*, 309 U. S. 206, 211-213; *N. L. R. B. v. Mason Mfg. Co.*, 126 F. 2d 810, 813-814 (C. C. A. 9); *N. L. R. B. v. Graham Ship Repair Co.*, 159 F. 2d 787, 788 (C. C. A. 9); *South Atlantic Steamship Co. v. N. L. R. B.*, 116 F. 2d 480, 481, 482 (C. C. A. 5), certiorari denied, 313 U. S. 582; *N. L. R. B. v. John Englehorn & Sons*, 134 F. 2d 553, 557-558 (C. C. A. 3).

In these circumstances, the single issue in this case is whether the Master Agreement, which was the agreement relied upon by respondent in defense of its conduct (*supra*, p. 2), was a closed-shop agreement or, in the language of the proviso to Section 8 (3) of the Act, whether it required of respondent's employees membership in the Teamsters "as a condition of employment."<sup>16</sup> As we have suggested above

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<sup>16</sup> Section 8 (3) of the Act makes it an unfair labor practice for an employer "By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization \* \* \*." The proviso to Section 8 (3) allows the following exception to this proscription: "*Provided*, That nothing in this Act \* \* \* shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a) in the appropriate collective bargaining unit covered by such agreement when made."

(*supra*, p. 2), this question is identical with one of the questions posed by *N. L. R. B. v. G. W. Hume Company, et al.*, No. 11693, now before this Court. Insofar as the question involves an interpretation of the language of the Master Agreement, therefore, our argument here is the same as that made in our brief in the *Hume* case (Board Br., pp. 24-32). For the convenience of the Court and the parties, however, we shall repeat the argument here.

1. The terms of the Master Agreement did not condition employment upon union membership

The portions of the Master Agreement (*infra*, pp. 29-55) which deal with the matters of hiring practices and the employer's obligations in connection with the union membership status of his employees are as follows (*infra*, pp. 31-35):

SECTION 3. PREFERENCE OF EMPLOYMENT AND  
HIRING PRACTICES.

(a) It is recognized that the refusal of Union members to work with non-union employees who are within the jurisdiction of the local union shall not constitute a violation of this agreement, provided, however, that before any strike action, job action, or other direct action is taken on this account, the local Union will submit the matter for adjustment as provided in Section 8 hereof.<sup>17</sup> In order to aid in the prompt adjustment of such matters, the Union shall furnish its members with a clearance card, dues book or other evidence of paid-up

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<sup>17</sup> Section 8 establishes the grievance procedure and provides for the ultimate disposition of grievance questions by arbitration if necessary (*infra*, pp. 35-38).

membership, and *when employees who are on the seniority lists, as defined in Section 9 hereof,*<sup>18</sup> *are called to work, the Employer will request that such evidence be presented by those who have it, and will keep a record, which will be available to the Union, of all employees who do not present such evidence. Similarly the Union will from time to time, when such information is available, notify the Employer of the names of delinquent or suspended members, or other nonunion employees, according to Union records.*

The Employer shall be the sole judge of the qualifications of all its employees, subject to appeal as provided in Section 8 hereof, but in the selection of *new employees* the Employer will give *preference of employment to unemployed members of the local union*, provided

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<sup>18</sup> Section 9 relates to the establishment of a seniority roster and provides, in part, as follows (*infra*, pp. 39-40) :

"(b) All jobs shall be filled and rehiring shall be from the regular list in the order of seniority, and thereafter all vacancies in positions of regular and seasonal employment shall be filled from the seasonal list in the same order \* \* \*. Similarly, lay-offs for lack of work shall be made in the reverse order of seniority \* \* \*.

"In rehiring new employees, the procedure and preferences provided in Section 3 hereof shall be followed \* \* \*.

\* \* \* \* \*

"(d) In each plant employees shall be divided into two (2) groups as follows: Regular employees and seasonal employees, all to be listed on one seniority roster for said plant.

"(e) Regular employees are those who have worked in a given plant at least forty (40) weeks out of the fifty-two (52) weeks during the preceding calendar year.

"Seasonal employees are those other than regular employees who worked in a given plant at least sixty (60) percent of the total number of operating days of said plant during the previous season."

they have the necessary qualifications and are available when new employees are to be hired. "New employees," for the purpose of this agreement, are defined to be persons who are not on the seniority list of the hiring plant, as defined in Section 9 hereof, even though they may have been employed previously by said plant. As a basis for preferential consideration as new employees as aforesaid, unemployed members of the local union shall be required to present a clearance card from the local union evidencing the fact of their paid-up membership. [If such union members are not available for such employment, the Employer may hire any person not a member of the Union provided that such person will be required to file an application for membership in the local union before being put to work. Upon filing such application he shall receive from the Union a written statement that he has made such application, which statement shall be taken up by the Employer and returned to the Union when the applicant is put to work. It is further understood that such person must become a member of the local union within ten (10) days after his employment, and that the local union will not unreasonably refuse to accept such person as a member.]<sup>19</sup> [Italics added.]

Subsection (b) of Section 3 of the Agreement provides for the mechanics of carrying out the foregoing

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<sup>19</sup> The matter in brackets was modified on or about July 10, 1943, due to the then existing manpower shortage, to permit the canneries to hire during the 1943 canning season "emergency workers" who, however, had to file an application for membership in the local union of the Council or obtain an "emergency card" therefrom before being allowed to work (*infra*, pp. 32, 50-51).

and requires the contracting local union to have a representative available in the plant to receive the applications from new employees (*infra*, pp. 32-35). In this subsection "the local union agrees to assume responsibility for completing the matter of subsequent affiliation by such new workers as members of the Union" (*infra*, p. 35).

Section 3 of the Agreement, as its title suggests, focuses upon the proposition that the employer will give *preference* to union members in hiring *new* employees. Nothing in the Agreement so much as suggests that *old* employees, that is, employees on the seniority list,<sup>20</sup> are required, as a condition of continued employment, either to join the A. F. L. or to maintain their memberships if they had joined in the past. The only provision in the Agreement requiring union membership of *any* employee is the second paragraph of Section 3 (a) which provides (1) that unemployed members of a local must show a clearance card "evidencing the fact of their paid-up membership" before they are eligible for "preferential consideration as new employees" (*supra*, p. 17), and (2) that a new non-union member employee, hired to fill a job for which a union member was not available, "must become a member of the local union within ten (10) days after his employment" (*ibid.*). Even these provisions affecting new employees, however, do not require such employees to *maintain* their union membership in the future as a condition of continued employment.

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<sup>20</sup> As shown above (*supra*, pp. 7-11), Employee Cedar, whose discriminatory discharge is involved herein, was a "regular" employee.



The provision in Section 3 (a) of the Agreement that a refusal on the part of union members "to work with non-union employees \* \* \* shall not constitute a violation of this agreement," is the only portion of this section of the Agreement applicable to employees on the seniority list (*infra*, p. 31).<sup>21</sup> And there is absolutely no indication therein that such employees are required to join, or maintain membership in, the union as a condition of employment. The provision does nothing more than preserve to union members the right to strike in protest against being required to work with non-union employees, and to do so without having such strike action constitute a violation of the Master Agreement. And even this right is qualified by the proviso that any dispute in this connection must be submitted for adjustment through the contractual grievance procedure, before any direct action may be taken by the union or its members. "In order to aid in the prompt adjustment of such matters," the Agreement provides that the union will furnish all its members with a clearance card "or other evidence of paid-up membership," and that the employer, upon recalling to work employees "who are on the seniority lists," will report to the union all such employees who do not present evidence of union clearance. Presumably as a cross-check to keep the records straight, the Agreement provides also that the union will, in turn, inform the employer of delinquent or suspended members.

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<sup>21</sup> If the Master Agreement were truly a closed-shop contract, this provision clearly would be meaningless, for no employees who were not members of the union would be permitted to work in the plant.

This is a far cry from an agreement providing for the maintenance of a closed-shop. Whatever else these terms of the Agreement may stand for, they certainly do not provide that employees on the seniority list must maintain membership in the union or else be subject to discharge from their jobs.

The fact that the terms of the Master Agreement do not make continued employment of employees on the seniority list contingent upon union membership is, we submit, decisive of the propriety of the Board's finding that respondent violated Section 8 (1) and (3) of the Act when it discharged Employee Cedar because he refused to join the Teamsters, and otherwise rendered assistance to the Teamsters.

The proviso to Section 8 (3) of the Act (*supra*, p. 14, n. 16) permits such discrimination against employees only where the employer and the union properly representing his employees have an agreement which makes union membership "a condition of employment." *Matter of Iron Fireman Manufacturing Co.*, 69 N. L. R. B. 19, 20-21. The proviso is, in short, an exception to the statute's broad proscription of employer discrimination against employees because of their union affiliations or activity and, as such, is to be narrowly and strictly construed.<sup>22</sup> As the Supreme Court has declared, "These words of the exception must have been carefully chosen to express the precise

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<sup>22</sup> The cases abound which lay down the fundamental principle that such a proviso must be strictly construed and that one seeking to come within the exception must comply strictly with the words as well as the reason for the proviso. See, e. g. *Hartford Electric Light Co. v. Federal Power Commission*, 131 F. 2d 953, 962 (C. C. A. 2), certiorari denied, 319 U. S. 741; *Great Atlantic &*

nature and limits of permissible employer activity in union organization" (*N. L. R. B. v. Electric Vacuum Cleaner Co., Inc.*, 315 U. S. 685, 695). The Congressional purpose in including the proviso in the Act was not to "favor," "facilitate," or give "special legal sanctions" to closed-shop arrangements between unions and employers (Report of the Senate Committee on Education and Labor, 74th Cong., 1st Sess., S. Rep. No. 573, pp. 11-12).<sup>23</sup> The purpose was simply to *permit* the making of a "traditional \* \* \* closed-shop agreement" within the bounds of the basic policies of the Act (S. Rep., pp. 12, 13). The Board and the courts, therefore, have read the proviso, not in isolation, but in conjunction with the Act as a whole, and have held, indeed, that even employer discrimination which might appear to be protected by the letter of the proviso is not permissible where it would result in a denial to employees of the fundamental freedom to select representatives, and the protection against discrimination, which the Act as a whole was designed to afford. *Wallace Corporation v. N. L. R. B.*, 323 U. S. 248, 256; *Local 2880 v. N. L. R. B.*, 158 F. 2d 365, 368-369 (C. C. A. 9),

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*Pacific Tea Co. v. Federal Trade Commission*, 106 F. 2d 667, 674 (C. C. A. 3), certiorari and rehearing for certiorari denied, 308 U. S. 625, 309 U. S. 694; *Fleming v. Hawkeye Pearl Button Co.*, 113 F. 2d 52, 56 (C. C. A. 8); *U. S. v. Dickson*, 40 U. S. 141, 164-165; *Canadian Pac. Ry. Co. v. U. S.*, 73 F. 2d 831, 834 (C. C. A. 9); *Rochester Telephone Corporation v. U. S.*, 23 F. Supp. 634, 636 (D. C. N. Y.), affirmed 307 U. S. 125; *Spokane & Inland R. R. v. U. S.*, 241 U. S. 344, 350; *Thomas Basham Co. v. Lucas*, 21 F. 2d 550, 551 (D. C. Ky.), affirmed 30 F. 2d 97 (C. C. A. 6).

<sup>23</sup> To the same effect, H. Rep. No. 1147, 74th Cong., 1st Sess., pp. 19-20.

certiorari granted, 65 S. Ct. 1305; *N. L. R. B. v. American White Cross Laboratories, Inc.*, 160 F. 2d 75, 77 (C. C. A. 2). In the instant case, where even the *letter* of the proviso was not satisfied (*supra*, pp. 15-20), it follows *a fortiori* that respondent can find no protection in the proviso either for the discrimination in which it has engaged, or for its other acts of assistance to the Teamsters.

2. The other contentions of respondent and the Teamsters are without merit

Respondent is in no way aided by its contention that, even if the language of the Master Agreement did not condition employment in its plant upon union membership, the parties to the contract administered it *as if* it did so. The Board properly rejected this contention as "not supported by the evidence" (R. 34, n. 3). Other than the bare statement of respondent's witness, Superintendent McIsaac, that while respondent was under contract with Local 22382 "employees coming under \* \* \* [the Master Agreement] were required to maintain good standing" in that union (R. 174-175, 197), there is no evidence that the parties administered the Agreement as a closed-shop contract. And McIsaac admitted that, prior to Cedar's discharge in June 1945, no employee had ever been discharged for failure to maintain union membership (R. 198, 219). Employee Cedar, the only other witness herein, testified that prior to respondent's recognition of the Teamsters in May 1945, all of respondent's employees, including himself, were members of Local 22382, but that he was not aware

of any *requirement* that respondent's employees join or maintain membership in Local 22382 (R. 137-138, 141-142).

In view of the considerations discussed above (*supra*, pp. 20-22), it clearly would be against everything the Act stands for to strain the terms of the Agreement and the conduct of the parties thereto, in order to wring out a construction which would excuse the interference and discrimination worked upon respondent's employees. Certainly upon this record the Board would not have been warranted in giving serious consideration to the claim that the conduct of the parties to the contract herein established the Master Agreement as a closed-shop agreement, even though its written terms failed to do so. There simply is no evidence of such alleged conduct in the record.<sup>24</sup>

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<sup>24</sup> In any event, in view of its unmistakably clear terms, the requirements of the Master Agreement could not be explained away or altered by reference to the conduct of the parties following its execution. It is elementary that, "if the meaning of the contract is plain, the acts of the parties cannot prove an interpretation contrary to the plain meaning" (3 Williston, *Contracts*, Rev. Ed., Sec. 623, pp. 1793-1794. *South Atlantic Steamship Co. v. N. L. R. B.*, 116 F. 2d 480, 482 (C. C. A. 5), certiorari denied, 313 U. S. 582), and that "The fact that the parties followed a different plan cannot work a revocation of the plain agreement" (*In re Chicago & E. I. Ry. Co.*, 94 F. 2d 296, 299 (C. C. A. 7)). *Railroad Co. v. Trimble*, 77 U. S. 367, 377; *Dant & Russel, Inc. v. Grays Harbor Exportation Co.*, 106 F. 2d 911, 912 (C. C. A. 9); *Lesamis et al. v. Greenberg*, 225 Fed. 449, 451-452 (C. C. A. 9); *Alaska Treadwell Gold Mining Co., et al. v. Alaska Gastineau Mining Co.*, 214 Fed. 718, 727 (C. C. A. 9), modified as to another point, 221 Fed. 1019 (C. C. A. 9), certiorari denied, 238 U. S. 614; *Hutchinson Gas & Fuel Co. v. Wichita National Gas Co.*, 267 Fed. 35, 46 (C. C. A. 8).

We submit, therefore, that with respect to both the written terms of the Master Agreement and the parties' understanding and administration of the agreement, respondent has failed to sustain its "burden of proof of a closed-shop agreement." *N. L. R. B. v. Mason Mfg.*, 126 F. 2d 810, 813 (C. C. A. 9).

The further contention that the Board, in the course of the proceedings in the *Bercut-Richards* case (*supra*, p. 5, n. 10), determined that the Master Agreement was a closed-shop agreement, is likewise without merit.

In its Supplemental Decision in the *Bercut-Richards* case (65 N. L. R. B. 1052) the Board, referring to the Master Agreement, stated that (*id.* at pp. 1057-1058):

\* \* \* No legal effect may be given the closed-shop provision contained in the current collective agreements after their expiration date \* \* \*.

But the *Bercut-Richards* case, unlike the instant case, did not involve an unfair labor practice. It was a representation proceeding under Section 9 of the Act. The only issue before the Board in that case was whether the objections to the elections held by the Board were valid and warranted an order setting the elections aside. The case involved no question as to whether or not the Master Agreement was a closed-shop contract and the Board had no occasion to pass upon, or to weigh fully the considerations determinative of, that question. It is specious, therefore, to argue that the Board's passing reference to a

“closed-shop provision” in the Agreement represented a commitment by the Board or a prejudgment of that question, should it ever arise, as it has now, in a subsequent unfair labor practice proceeding. Actually the statement in the *Bercut-Richards* decision was merely part of an admonition to the employers there involved that, while the representation question in that case was pending before the Board, they should avoid any acts of recognition or assistance to any labor organization. The Board’s use of the phrase “closed-shop provision” was clearly nothing more than a broad non-technical reference to the union-membership provisions in the preferential hiring section of the Master Agreement. As the Board observed in its decision in the *Hume* case (71 N. L. R. B. 553, 557) the parties in the *Bercut-Richards* proceeding had similarly used the term “closed shop” to describe contractual membership requirements generally. Moreover, since the discharge herein was made prior to the issuance of the *Bercut-Richards* decision, respondent could not have relied upon the Board’s statement therein, or have been misled by it.<sup>25</sup>

#### CONCLUSION

It is respectfully submitted that the Board’s findings are supported by substantial evidence, that its order is

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<sup>25</sup> The Board’s Supplemental Decision in the *Bercut-Richards* case was issued on February 15, 1946 (65 N. L. R. B. 1052). The discriminatory discharge of Employee Cedar herein occurred on June 23, 1945 (*supra*, pp. 11-12).

valid,<sup>26</sup> and that a decree should issue enforcing the order in full.

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 RUTH WEYAND,  
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 MARCEL MALLET-PREVOST,  
 SAMUEL M. KAYNARD,  
*Attorneys,*  
*National Labor Relations Board.*

DECEMBER 1947.

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<sup>26</sup> We have noted (*supra*, p. 3) that respondent filed no exceptions to the Trial Examiner's Intermediate Report which included a recommended order (R. 65-70). The Board's order consists of an adoption of certain portions of the order recommended by the Trial Examiner (R. 35-38, 65-70). The only portion of the order, as adopted by the Board, to which the Teamsters filed exceptions was the requirement that the notice to be posted by respondent state that respondent will not "in any manner encourage or coerce" its employees to become or remain members of the Teamsters "or any other labor organization, whether or not because of pressure from that or any other organization, or because of other economic considerations" (R. 30, 37-38, 69). Upon this state of the record the propriety of the other portions of the Board's order is not now open to review. *N. L. R. B. v. Cheney California Lumber Co.*, 327 U. S. 385; *N. L. R. B. v. Kinner Motors, Inc.*, 154 F. 2d 1007 (C. C. A. 9); *N. L. R. B. v. Van de Kamp's Holland Dutch Bakeries*, 154 F. 2d 828 (C. C. A. 9). In any event, the validity of the order on the findings made, including the notice provision excepted to by the Teamsters, is well established. *N. L. R. B. v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265, 268; *Phelps-Dodge Corp. v. N. L. R. B.*, 313 U. S. 177, 187-189, 197; *Int'l Ass'n of Machinists v. N. L. R. B.*, 311 U. S. 72, 75, 81-83; *N. L. R. B. v. Express Publishing Co.*, 312 U. S. 426, 438, 439.



## APPENDIX A

The relevant portions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C., Sec. 151, *et seq.*) are as follows:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

\* \* \* \*

(3) By discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, \* \* \* shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

\* \* \* \*

SEC. 10. \* \* \*

(c) \* \* \* If \* \* \* the Board shall be of the opinion that any person \* \* \*

has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. \* \* \*

\* \* \* \* \*

(e) The Board shall have power to petition any circuit court of appeals of the United States \* \* \* within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order \* \* \*. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. \* \* \*

## APPENDIX B

### BOARD'S EXHIBIT No. 4, in "MATTER OF G. W. HUME COMPANY, ET AL."

COLLECTIVE BARGAINING AGREEMENT BETWEEN CALIFORNIA PROCESSORS AND GROWERS, INC., AND THE AMERICAN FEDERATION OF LABOR AND CALIFORNIA STATE COUNCIL OF CANNERY UNIONS AS ADOPTED JUNE 10, 1941, AMENDED JANUARY 26, 1942, AMENDED JULY 10, 1943.

#### AGREEMENT

This Agreement made and entered into this 10th day of June 1941 (as amended January 26, 1942 and July 10, 1943) by and between California Processors and Growers, Inc., as collective bargaining agent for and on behalf of those canning companies, each of which is hereinafter called the Employer, and which by written statement attached to this agreement or specifically referring to this agreement, adopt this agreement and promise to be bound thereby, and the American Federation of Labor and California State Council of Cannery Unions, as collective bargaining agents for and on behalf of those Cannery Workers Unions, chartered by the American Federation of Labor, each of which is hereinafter called the Union, and which by written statement attached to this agreement or specifically referring to this agreement, adopt this agreement and promise to be bound thereby.

Witnesseth: That in consideration of the premises it is mutually agreed as follows:

Each and every, all and singular of the obligations and provisions of said collective-bargaining agree-

ment dated June 10, 1941, as amended January 26, 1942, are hereby ratified and confirmed, without variation or modification of any kind or character, except as specified in the amendments hereinafter set forth and in the "Supplementary Emergency Agreement" of even date herewith.

SECTION 1. Recognition. The Employer through its representative, California Processors and Growers, Inc., hereby agrees to recognize the Union through its representatives, California State Council of Cannery Unions and the American Federation of Labor, as the sole agency representing its employees for the purpose of collective bargaining. There shall be no discrimination of any kind against any employees on account of union affiliation or on account of bona fide union activity of such persons.

SECTION 2. Operation of Agreement. In addition to the operation of this master contract as an agreement between the collective bargaining agents of the Employers and the Unions above described, this contract shall operate as a direct agreement between individual Employers and individual local Unions as to named canning plants and named local Unions, upon the execution of the attached forms of certificate setting forth the name of the Employer, the location of the plant, and the name and charter number of the Union concerned. The execution of such certificates shall bind the individual Employers and individual Unions mutually concerned, for the plants and for the membership of the local Unions so named, as follows: The Employer will pay the wages herein specified and perform the agreements on its part as hereinafter set forth, and the Union, through its membership, will do the work herein described and perform the agreements on its part as hereinafter set forth, each without limitation or reservation except as expressed hereinafter.

### SECTION 3. Preference of Employment and Hiring Practices.

(a) It is recognized that the refusal of Union members to work with non-union employees who are within the jurisdiction of the local Union shall not constitute a violation of this agreement, provided, however, that before any strike action, job action or other direct action is taken on this account, the local Union will submit the matter for adjustment as provided in Section 8 hereof. In order to aid in the prompt adjustment of such matters, the Union shall furnish its members with a clearance card, dues book or other evidence of paid-up membership, and when employees who are on the seniority lists, as defined in Section 9 hereof, are called to work, the Employer will request that such evidence be presented by those who have it, and will keep a record, which will be available to the Union, of all employees who do not present such evidence. Similarly the Union will from time to time, when such information is available, notify the Employer of the names of delinquent or suspended members, or other non-union employees, according to Union records.

The Employer shall be the sole judge of the qualifications of all of its employees, subject to appeal as provided in Section 8 hereof, but in the selection of new employees the Employer will give preference of employment to unemployed members of the local union, provided they have the necessary qualifications and are available when new employees are to be hired. "New Employees", for the purpose of this agreement, are defined to be persons who are not on the seniority list of the hiring plant, as defined in Section 9 hereof, even though they may have been employed previously by said plant. As a basis for preferential consideration as new employees as aforesaid, unemployed mem-

bers of the local union shall be required to present a clearance card from the local union evidencing the fact of their paid-up membership. [If such union members are not available for such employment, the Employer may hire any person not a member of the Union provided that such person will be required to file an application for membership in the local union before being put to work. Upon filing such application he shall receive from the Union a written statement that he has made such application, which statement shall be taken up by the Employer and returned to the Union when the applicant is put to work. It is further understood that such person must become a member of the local union within ten (10) days after his employment, and that the local union will not unreasonably refuse to accept such person as a member.]<sup>1</sup>

(b) The following rules and practices shall govern in carrying out the foregoing provisions of this Section relating to preferential employment and to hiring new employees:

(1) A central authority, responsible for hiring and firing, shall be established and maintained in each plant of the employer which, under Section 2 hereof, is subject to the provisions of this agreement. Such plants shall be known as "member plants". Each member plant shall furnish the appropriate local union and the California Processors and Growers, Inc., with the name of the person assigned by such member plant to the responsibility of acting as such central authority.

The person assigned to the responsibility of acting as such central authority shall have full authority for hiring and firing and shall be

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<sup>1</sup> Matter in brackets is modified by Section 1 of the Supplementary Emergency Agreement. See page 35. [*infra*, pp. 50-51].

available at all proper times to carry out the purposes of this agreement, and the Employer agrees that the person so assigned shall not have conflicting duties which will interfere with his availability.

(2) At the beginning of the operating season for processing perishable products, whether fruits or vegetables, and upon the resumption of operations during such operating season after any shut down lasting two weeks or more, the respective member plants of the Employer will give the local union office written notice of beginning or resuming operation equivalent in time to that given to registered workers on the seniority list of such plants, and at least 48 hours before such operations start provided such information is available to the Employer in time to fulfill this requirement. In case of a shut down of less than two weeks, the local union office will be given the same length of notice of resumption of work as that given to employees of the plant concerned. Information concerning the probable or actual termination of any operating season, and of shut downs for substantial periods of time during such season, will be furnished to the local Union by the Employer when and to the extent that such information is available. In the event that an Employer gives notice that no further processing operations are to be undertaken after the completion of operations on any particular product in a given season, and employees are thereafter laid off for lack of work, any such employees having seniority who are subsequently recalled to work in said plant during said season on account of the resumption of processing operations, and who fail to report, shall not lose their seniority rights as provided in 9 (h) hereof, but shall be deemed to have a reasonable excuse for such failure to report.

(3) During the operating season, and at the beginning of each work shift or day, the local

union undertakes to have available, at member plant subject to this agreement, sufficient qualified members of the appropriate local union to fill normal vacancies. If such members are not available at such plants, other persons may be hired as herein provided.

(4) During any day or shift, if there is an increase in volume of work which necessitates the hiring of five or more additional employees, the local union will be given at least two hours' notice of such need, to enable said union to make available sufficient qualified local union members, before other persons are hired as herein provided. To aid in the practical application of this provision and to avoid unnecessary calls at night, the local union will furnish the appropriate central hiring authority, in plants operating night shifts, with a list of currently available local union members whenever possible to do so.

The foregoing procedure shall apply during the operating season for processing perishable products, whether fruits or vegetables, and shall likewise apply during the non-processing season with the exception that during such portion of the year the procedure shall apply to the hiring of any or all additional employees, rather than to "five or more additional employees" as provided during the processing season.

(5) Each local union will provide a practical method for receiving notices herein provided, and Employer will be released from obligation under these rules if notice is given but not availed of by the local union concerned, or if no one is reasonably available to receive notice.

(6) When hiring "new employees" (as defined in Section 3 (a) hereof) if qualified members of the appropriate local union are not available, the Employer will require applicants for work to follow the procedure described in



Section 3 (a) hereof before being put to work, and will advise such applicants of the provision of this Section requiring affiliation with said union within ten (10) days after actual employment. The local union agrees to have a representative available for receiving union applications at times designated by the member plant central hiring authority for employing new workers, and the local union agrees to assume responsibility for completing the matter of subsequent affiliation by such new workers as members of the Union.

\* \* \* \* \*

SECTION 8. Adjustment of Grievances. Grievances arising in any plant covered by this contract will be reported in writing to the shop committee and/or local business agent. If no satisfactory settlement can be reached with the plant management, the Union, through its Executive Board, will turn over the matter to the Adjustment Board hereinafter provided.

The Employer shall have an equal right to present grievances to the Shop Committee, and/or local business agent, and if adjustment through the local union fails, to present any unsettled matters to the Central Adjustment Board.

A Central Adjustment Board will be set up promptly with the signing of this agreement. The members of this Board will be composed of six (6) Business Agents to be elected by the California State Council of Cannery Unions, four (4) of which are to be regulars and two (2) to act as alternates. There shall be at least one (1) woman union representative serving on the Adjustment Board at all times. The California Processors and Growers, Inc., will set up a committee of like number to act with the Union committee. Any disputes or grievances that are referred to it as herein provided shall be decided by the Central Adjustment Board, and the decision of

that Board shall be final and binding on all parties concerned. The Adjustment Board must meet within three (3) days after being notified. In the event that this committee becomes deadlocked within three (3) days after meeting, then an outside person, mutually satisfactory, shall be called in to make the final decision. In any event, a final decision shall be made within nine (9) days after the original reference.

Nothing in this agreement shall be deemed to limit the right of the Employer to discharge an employee for cause, provided, however, that if an employee claims to have been unjustly discharged, suspended, or discriminated against in any manner during the life of this agreement his or her case shall be taken up by the employee with the Shop Committee and/or Business Agent within twenty-four (24) hours. If upon investigation the matter is not thus disposed of, the case may be referred to the executive committee of the Union, and an official of the Company; provided that written notice of such appeal shall be delivered forthwith by the appealing party to the other party. If these parties are unable to agree, the case may be appealed within forty-eight (48) hours after notice is given to the employee that no adjustment has been made. The appeal shall be to the Adjustment Board hereinabove provided for in the same manner and with the same effect as set forth for the adjustment of other matters provided in this section. In case a discharge is found to be unjustifiable by the Adjustment Board, the Board may order payment for lost time or reinstatement with or without payment for lost time. In cases of demotion and discharge of employees on the seniority lists for lack of qualifications or ability to perform a job, the Employer will notify the Union before action is taken, whenever time and circumstances permit.

In addition to the power to adjust grievances referred to it by local unions or the Employer as hereinabove provided, and the determination of appeals in cases of contested discharge, the Adjustment Board shall have the power and responsibility to investigate and determine all matters arising under Section 3 (a) hereof relating to the refusal of union members to work with nonunion employees. In all such cases notice of the existence and nature of such dispute shall be submitted in writing to California Processors and Growers, Inc., by the local union, in addition to presentation to the Shop Committee and/or local business agent as hereinabove provided.

The specific provisions of this section shall not be construed to limit the kind of grievances that may be submitted for adjustment, nor shall the provisions of Section 15 (d) hereof be construed as a limitation of power.

In addition to meetings called to consider specific disputes as herein provided, the General Adjustment Board shall meet at least once a month, or at other times determined by mutual agreement of the members thereof, for the purpose of considering any matters, in addition to the adjustment of grievances presented by any party hereto, that may relate to the interpretation or administration of the provisions of this agreement. All decisions of said Board in adjusting grievances, and all determinations of said Board relating to the interpretation or administration of this agreement shall be reduced to writing and shall be sent to each local union and to each Employer, party to this agreement. Adjustments or interpretations made in settlement of local disputes prior to submission to the Board shall not be binding upon the Central Board, but any adjustment or interpretation made

by the Central Board shall be binding on all parties hereto.

Nothing in this section shall be construed to empower the Central Adjustment Board to change, modify, or amend the provisions of this agreement.

It is further understood that no member of the Central Adjustment Board will act as a Board member in cases concerning his own company, or his own local union, as the case may be.

Any expense voted by this Board will be borne equally by both parties to this agreement.

Pending decision of this Board, there shall be no cessation of work by the employees.

#### SECTION 9. Seniority.

(a) A seniority list shall be prepared for each plant, party to this agreement, and said list shall be prepared and presented to the appropriate local union within thirty (30) days after the signing of this agreement and thereafter said list shall be prepared and submitted to said Union within 30 days after the effective date of the contract in each succeeding year. Upon submission of said list to the local union, a copy or copies shall be posted by the Employer in a conspicuous place in the cannery concerned for inspection by employees, together with a notice that any requests for correction or modification of said list by employees or the local union must be made within a specified period of time. Such period of time, and similar periods for subsequent determination of seasonal lists, shall be fixed by mutual agreement between the Employer and the local union, or if no agreement is reached, by the Central Adjustment Board. After such notice, and the expiration of said period, no requests for change or modification of said lists will be considered. Said list shall be based on the beginning date, as accurately as can be deter-

mined, of continuous regular employment or consecutive seasonal employment, as the case may be, as such employment is hereinafter defined. All employees covered by this agreement and referred to in Section 4 (a) hereof shall be named on said list.

(b) All jobs shall be filled and all rehiring shall be from the regular list in the order of seniority and thereafter all vacancies in positions of regular and seasonal employment shall be filled from the seasonal list in the same order, provided that the person or persons having seniority are capable of performing in a manner satisfactory to the Employer the work which is available, provided, however, that a right of appeal shall exist as provided in Section 8 hereof. Similarly, lay-offs for lack of work shall be made in the reverse order of seniority, due consideration being given to the ability of the employee laid off and of the remaining employees to perform the work available in a manner satisfactory to the Employer, subject to the right of appeal as provided in Section 8 hereof.

In hiring new employees, the procedure and preferences provided in Section 3 hereof shall be followed, with the understanding that after the provisions of said Section 3 have been fulfilled, local residents will be given prior consideration in new employment.

(c) The relative position of said workers on said list in the respective groups hereinafter described shall be determined by length of service computed in the manner herein set forth.

(d) In each plant employees shall be divided in two (2) groups as follows: Regular employees and seasonal employees, all to be listed on one seniority roster for said plant.

(e) Regular employees are those who have worked in a given plant at least forty (40) weeks out of the fifty-two (52) weeks during the preceding calendar year.

Seasonal employees are those other than regular employees, who worked in a given plant at least sixty percent (60%) of the total number of operating days of said plant during the previous season.

An operating day is hereby defined as either any day during which perishable products are being processed when not less than twenty percent (20%) of the average number of employees on the plant pay roll during the week of greatest employment during the season are at work, or any day during which not less than twenty percent (20%) of the average total daily pay roll during the week of greatest employment during the season is paid out.

(f) Any person on the regular or seasonal seniority list of a given plant at the beginning of the 1940 season shall be entitled to credit for prior service for seniority purposes on the following basis:

(1) For regular employees: one year's credit for each consecutive year prior to 1940, back to and including 1937, during which such employee worked forty (40) weeks or more in such plant during a calendar year; and one year's credit for each consecutive year prior to 1937 that such employee worked any portion of a calendar year in such plant.

(2) For seasonal employees: one year's credit for each consecutive year prior to 1940, back to and including 1937, during which such employee worked sixty per cent (60%) of the total actual operating days in such plant during a calendar year, as defined in the 1940 agreement; and one year's credit for each consecutive year prior to 1937 that such employee worked any portation of a calendar year in such plant.

Absence from the plant payroll for a total calendar year, except as provided in Section 9 (i) hereof, shall prevent the crediting of that year or any prior year for purposes of seniority hereunder.

Any employee, whether regular or seasonal, who was on the seniority list of a given plant at the beginning of the 1940 season shall not thereafter lose his or her seniority status for failure to qualify by working forty (40) weeks, if a regular, or sixty per cent (60%) of the operating days as herein defined, if a seasonal worker, provided such failure is due to lack of available work, which such worker is qualified to perform, unless such employee shall be off the payroll of such plant for a total calendar year, or has been on the pay roll of such plant for two consecutive years but without qualifying for seniority in either year. In the event any employee fails to qualify in a given year, but thereafter does qualify for seniority as herein provided, such employee upon such subsequent qualification shall be entitled to credit for the intervening year or years as herein specified, but not to exceed two consecutive years.

If a regular employee loses his place on the regular seniority list in the manner hereinabove set forth, he may claim a place on the seasonal list, not later than the following year, and will take his appropriate relative place on that list in accordance with his seasonal seniority. If a seasonal employee gains a place on the regular list by qualifying length of employment, he shall not lose his seniority rating on the seasonal list, but may reclaim this seasonal standing if laid off for lack of work as a regular employee.

(g) Any employee discharged for cause, or voluntarily quitting his or her employment, except in the case of lay-off for lack of work, or leave of absence with written consent, as provided in Section 9 (i), shall lose all seniority rights.

(h) Any person on the seniority list who is reasonably notified to report for work, and who fails to do so within a period of forty-eight (48) hours shall lose

all seniority rights, provided, however, that if said failure to report was excusable for reasons satisfactory to the Union and the Employer, such person shall lose only the immediate employment offered and shall be continued in his or her relative place on the seniority list. The employer will furnish the local union with a list of the persons who have failed to report for work after notification.

(i) When employees in plants covered by this contract are obliged to leave their cannery jobs because of acceptance by them of official positions with the Union, their seniority shall not be lost during such absence, but shall accumulate during such period in the same manner as if they remained employed in the status held by them before leaving, provided, however, that upon termination of their union position they notify the Employer within 30 days of such termination and shall then be eligible for reinstatement in accordance with the provision of Section 9 (b) hereof. All present officials of local unions, parties to this contract, shall be protected in their seniority status retroactively to cover the period of their incumbency as such union officials. Leaves of absence without loss of seniority for any other cause shall be granted only with the written approval of both Employer and the Union. Leaves of absence shall be granted for just cause, and approval shall not be withheld arbitrarily by the Employer or the Union. These provisions requiring written leave of absence shall not apply to absences, granted by the Employer for sickness or similar reasons, of less than ten (10) days duration.

(j) Notwithstanding the provisions of this section relating to seniority, when it is necessary to employ persons to perform supervisory duties or duties requiring special training or experience, and in the Employer's judgment it is necessary to select a person



regardless of seniority to fill such position, such person may be employed and assigned to any place of employment without regard to the seniority list, provided he is compensated at a wage higher than the minimum wage established for Bracket IV herein. Such employees shall receive such wage for any duties performed by them, whether in lower classification or not, so long as they are separately listed and employed without regard to the seniority list as herein provided. If persons named to such positions have a seniority rating based on prior service, they shall not lose said rating by reason of being separately listed, but may reclaim their seniority standing if laid off for lack of work on the type of assignment described herein. If such persons have no seniority rating based on prior service, however, they shall gain no seniority rights by reason of their employment under the provisions of this section. A copy of the lists of all such employees shall be furnished to the local union concerned, to the California State Council of Cannery Unions and to the California Processors and Growers, Inc. The Employer's judgment shall not be exercised arbitrarily, and any disputes arising hereunder shall be referred to the Central Adjustment Board as provided in Section 8 hereof.

(k) Any modifications to Section 9 shall be by mutual consent of the local union and an employer-canner party of this agreement. Any such modification shall be reduced to writing and a copy filed with the California Processors and Growers, Inc., and with the California State Council of Cannery Unions.

SECTION 10. Students. When an employer desires to put persons to work for the purpose of training them in a cannery job and not for the purpose of having them become permanent employees at such job, he may, without regard to the principle of seniority,

put such persons to work, but there shall not be more than one (1) such person per two hundred (200) employees or fraction thereof. Students will not be admitted to union membership and shall gain no seniority rights. The application of this section by the Employer shall be subject to review by the Adjustment Board as provided in Section 8 hereof. A list of students shall be furnished to the local union.

SECTION 11. Visits by Union Officials. The Employer agrees to admit to its plant at all reasonable times any authorized representative, or representatives, of the Union for the purpose of ascertaining whether or not this agreement is being observed by the parties hereto, and to assist in adjusting grievances. A duly authorized agent of the local union will be permitted to collect dues in the plant, and the Employer hereby agrees to cooperate in arranging for visits for this purpose, to provide a suitable place for receiving dues, and to name two (2) persons in the plant, each of whom shall have authority to make arrangements for such visits. These privileges shall be so exercised that no time is lost unnecessarily to the Employer, and the Union representatives shall advise Employer of such visits by notifying the plant office before or at the time of entering the plant. The privileges herein granted may be suspended for any willful violation of the provisions of this section, and such violation may be referred to the Adjustment Board as provided in Section 8.

SECTION 12. Vacation Period. Any employee who has been on the pay roll of a company for forty (40) weeks and has worked sixteen hundred (1,600) straight time hours, or more, during the current period of twelve (12) consecutive months from and after the date or anniversary date of his employment shall

receive one (1) week's vacation with pay, said vacation period to be taken prior to the beginning of the next processing season, or at other times by mutual consent. Vacation pay shall be based on a forty (40) hour workweek at straight time.<sup>5</sup>

SECTION 13. Compliance. In the event of a violation of any part of the agreement by an employer, party to this agreement, such violation shall be immediately brought before the Central Adjusting Board, herein provided for, and the ruling handed down by said Board and/or ninth disinterested person, if such person is required, shall be final and binding upon the parties. If such employer does not abide by that ruling it shall then be necessary for the California Processors and Growers, Inc., to immediately suspend that employer from that Association and no assistance will be given him by that body against the action deemed advisable and necessary by the Union, because of the refusal of the employer to accept the ruling handed down by the Central Adjustment Board and/or the ninth disinterested person, if such person is called into the case.

Likewise, in the event of a violation of any part of this agreement by the individual union in the plant or plants of the Employer, such violation will be immediately brought before the Central Adjust-

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<sup>5</sup> "The current union agreement provides (Section 12) that 'Vacation pay shall be based on a forty (40) hour week at straight time.' This language contemplates that such vacation pay should be the normal straight time compensation of the individual concerned and consequently, when a worker has been assigned to more than one classification and received different rates of pay during the qualifying period, his vacation rate should be his average straight-time rate over such period, rather than that in effect immediately prior to the vacation."—Central Adjustment Board Ruling 5/15/42.

ment Board, provided herein, and the ruling handed down by such Board and/or disinterested party shall be final and binding upon the parties. If such individual union refuses to abide by the ruling handed down, it shall then be necessary to immediately recommend to the American Federation of Labor that that individual union shall not receive official recognition from the American Federation of Labor and the California State Council of Cannery Unions, and thereby prevent that individual union from receiving any assistance from those bodies until such time as the individual union agrees to comply with the ruling handed down by the Central Adjustment Board and/or the ninth disinterested person.

SECTION 14. Conflicting Agreements. In the event that the American Federation of Labor or the California State Council of Cannery Unions, or any of the local unions, parties hereto, make any agreement with any employer, within the jurisdiction of any individual local union, party to this agreement, as such jurisdiction now exists, the Employer hereunder shall be entitled, within the area included under the jurisdiction of any local union which is a party hereto, to the benefit of any terms contained in such agreement which may be more favorable to the Employer thereunder than those set forth herein, notwithstanding the provisions of this contract. A copy of all such agreements shall be filed with the California State Council of Cannery Unions, and the California Processors and Growers, Inc., at the time they become effective.

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SECTION 18. Term of Agreement. The term of this agreement shall be until March 1, 1945, provided,

however, that either party may, by written notice given fifteen (15) days prior to December 31, 1943, or fifteen (15) days prior to December 31st of any subsequent year during the life of this agreement, re-open the same for the adjustment of wages, hours, and working conditions. Any changes desired shall be reduced to writing and delivered to the other party prior to, and negotiations must start not later than, the first business day in January next following receipt of such written notice and such negotiations must be completed before March 1st of same year. In the event that this agreement shall not have been modified previously, and in the event that no notice shall be given by either party to the other, as hereinabove provided, then the terms of this agreement shall automatically be extended for an additional period of one (1) year, and thereafter shall automatically be extended from year to year unless one of the parties shall give notice to the other of a desire to modify said agreement, at least fifteen (15) days prior to December 31st in any following year of the life of this agreement. In the event that such notice is given prior to December 31st as hereinabove provided, and negotiations are begun, the terms of the agreement as of the date of such notice shall remain in full force and effect during and until the following March 1st, and if negotiations continue beyond such date by mutual agreement, any agreement reached thereafter shall be effective retroactively to said March 1st. In the event no agreement is reached by said March 1st, however, either party may give notice to the other of the termination of negotiations and thereby cancel said negotiations and this agreement.

In Witness Whereof the parties hereto have set their hands and seals this 10th day of July, 1943.

CALIFORNIA PROCESSORS AND  
GROWERS, INC.,

By L. E. NEEL, *President.*

WILLIAM E. YEOMANS, *Secretary.*

CALIFORNIA STATE COUNCIL  
OF CANNERY UNIONS,

By L. J. HILL, *President.*

HAL P. ANGUS, *Secretary.*

Witnesses:

OMAR HOSKINS,

*U. S. Commissioner of Conciliation.*

GEORGE L. GOOGE,

*Special Representative of American  
Federation of Labor.*

J. PAUL ST. SURE,

*Attorney for California Processors  
and Growers, Inc.*

\* \* \* \* \*

#### ADDITIONAL WAGE PROVISIONS

\* \* \* \* \*

4. The provisions set forth herein shall be effective as of March 1, 1943, as a master contract and shall operate as a direct agreement between individual employers and individual local unions as to named plants and unions upon the execution of certificates in the manner and form as set forth in Section 2 of the collective bargaining agreement of June 10, 1941, and shall continue in full force and effect thereafter in accordance with the provisions of Section 18 of the collective bargaining agreement.

5. It is expressly understood that in the event war-time conditions or restrictions result to the canning industry by governmental order or action, whether

directly or indirectly, so as to interfere with or interrupt normal operations of the canneries covered by this agreement or the normal conditions of work in such canneries, then, notwithstanding the provisions of the collective bargaining agreement herein described, the Employer shall not be liable for any penalty or default during or as a result of such interference, interruption or restriction and similarly, the employees of the Union shall not be liable for any additional obligation to the Employer during or as a result of such interference, interruption or restriction. It is the intent of the parties hereto to provide an express waiver of contractual penalties to accomplish a mutual assumption of losses of time and production resulting from such government orders or actions, and it is further agreed that all reasonable efforts will be made to reach a mutual understanding as to any unforeseen operating or working problems that may result from other war-time conditions not covered by this waiver.

In Witness Whereof the parties hereto have set their hands and seals this 10th day of July, 1943.

CALIFORNIA STATE COUNCIL  
OF CANNERY UNIONS,

By L. J. HILL, *President*,  
HAL P. ANGUS, *Secretary*.

CALIFORNIA PROCESSORS AND  
GROWERS, INC.,

By WILLIAM E. YOEMANS, *Secretary*.

#### SUPPLEMENTARY EMERGENCY AGREEMENT

This memorandum of agreement made and entered into this 10th day of July, 1943, by and between California Processors and Growers, Inc., as collective bargaining agent for those canning companies more particularly described in that certain collective bar-

gaining agreement executed on the 10th day of June, 1941, as amended January 26, 1942, and The American Federation of Labor and California State Council of Cannery Unions, as collective bargaining agent for those cannery workers' unions more particularly described in said collective bargaining agreement,

Witnesseth: That in consideration of the premises it is mutually agreed as follows:

During the cannery operating season of 1943, in order to alleviate the critical manpower shortage existing in California and to promote the continued operation of canneries and the essential production of food, the following emergency provision shall be in effect as modifications of the collective bargaining agreement executed this day:

1. The final three sentences of the second paragraph of Section 3 (a) are amended to read as follows:

If such union members are not available for such employment, the Employer may hire any person not a member of the Union provided that such person will be required to file an application for membership in the local union or obtain an "Emergency" card from the local union before being put to work. An emergency worker shall not be required to complete his affiliation with the local union except as hereinafter provided, but shall have the right to do so at any time if he so desires, in which event any payments therefor made to the Union by such emergency worker shall be credited by the Union as payment on account of the regular initiation fee of such person. An emergency worker shall not acquire seniority rights and shall not continue his status as an emergency worker beyond the period of the operating season. If an emergency worker completes his affiliation with the Union, he shall acquire seniority from the date of original employment.



Upon filing application for union membership, or obtaining an emergency card, the person to be employed shall receive from the Union a written statement evidencing the fact, which statement shall be taken up by the Employer and returned to the Union when the person is put to work. It is further understood that emergency workers shall obtain renewals of their status from week to week, and that persons filing applications for membership in the local union shall complete their affiliation within ten (10) days after employment. The local union agrees that it will not unreasonably refuse to grant emergency status to any person; and that it will not unreasonably refuse to accept any applicant as a member.

2. It is further understood and agreed that the following provisions shall govern emergency workers during the 1943 cannery operating season:

New employees will be required to present a clearance from the Union before being put to work. In the case of applicants for regular union membership, the regular contract provisions will apply.

In the case of emergency workers, such workers will be required to present a receipt showing advance payment of 50¢ to cover the current week. Such receipt should indicate that no refund will be made if the employee works less than one week. The union undertakes to issue these 50¢ receipts at times when new employees are being hired, as now provided for clearances in the case of applicants for membership.

At the time of employment of emergency workers, such workers will be informed by the Employer that the contract provides that they must obtain new receipts from week to week.

After the initial employment of emergency workers, the Employer will undertake to investigate their status, week by week, to ascertain

whether or not they have a receipt for the current week's fee, paid in advance. In order to facilitate the making of this investigation, the Union should furnish the Employer, at least once a week, a list of all emergency workers who have made the required payment for the current week, and a list of those who have failed to do so.

The employers will not provide a check-off of weekly payments, nor undertake to make collections, but they will observe in good faith the requirement that emergency workers must obtain renewals of their status from week to week in order to continue at work.

The specific details of receipt forms and agreements as to dates for securing lists shall be worked out locally, and if any disputes arise, they shall be submitted to the special committee hereinafter provided.

Present or former union members will not be qualified to come within the category of emergency workers, but other new employees shall have the option of becoming either regular members or emergency workers, provided, however, that after working twenty-four (24) days, or after working all regular shifts whenever work is available for four (4) pay roll periods (whichever is the lesser total of working days) emergency workers will be deemed to be in the same category as other cannery workers and will be required to become members of the Union, unless they are employed elsewhere and are doing cannery work in addition to their regular employment.

Members of the armed forces shall be exempt from the payment of any fees or dues, it being understood that members of the armed forces may be employed in cases where there is a mutual determination that a shortage of civilian workers exists, but only when their employment will not interfere with the customary employment and regular engagement of civilians.

3. It is further understood and agreed that in order to further the purposes and administration of this Supplementary Emergency Agreement, a Special Committee is hereby established as follows:

A Special Committee composed of (1) the representatives of The American Federation of Labor assigned by President William Green to assist California cannery workers' unions, (2) the Secretary-Treasurer of the California State Council of Cannery Unions, (3) the labor relations counsel of the California Processors and Growers, Inc., and (4) the Secretary of the California Processors and Growers, Inc., shall function during the 1943 cannery operating season. If any differences arise concerning the operation or administration of the provisions of this Supplementary Emergency Agreement, or if any manpower emergencies arise which threaten the continued operation of the canneries during the term of said agreement, such differences and such emergency problems, at the request of either party hereto, shall be referred to said Special Committee, and said committee shall have the responsibility and the exclusive authority to make all necessary adjustments or decisions to settle such differences or to meet such emergencies.

In Witness Whereof the parties hereto have set their hands and seals this 10th day of July 1943.

CALIFORNIA PROCESSORS  
AND GROWERS, INC.,  
By L. E. NEEL, *President*,  
And WILLIAM E. YEOMANS,  
*Secretary*.

CALIFORNIA STATE  
COUNCIL OF CANNERY  
UNIONS,  
By L. J. HILL, *President*,  
And HAL P. ANGUS, *Secretary*.

Witnesses:

OMAR HOSKINS,

*U. S. Commissioner of Conciliation.*

GEORGE L. GOOGE,

*Special Representative of American  
Federation of Labor.*

J. PAUL ST. SURE,

*Attorney for California Processors  
and Growers, Inc.*

This is to certify that A. F. of L. Cannery Workers Union, No.-----, ----- County, California, hereby represents that a majority of the employees in ----- Plant of ----- located at ----- are members of said Union and individually for themselves and as a unit have designated said union as their representative for collective bargaining.

The said union hereby adopts that certain agreements made and entered into on the 10th day of July, 1943 by and between California Processors and Growers, Inc., for and on behalf of certain canning companies and The American Federation of Labor, and California State Council of Cannery Unions for and on behalf of certain cannery workers' unions, and promises to be bound thereby.

By authority of the Union.

CANNERY WORKERS UNION,

----- COUNTY,

No. -----

By -----

*President.*

By -----

*Secretary.*

Dated: -----, 1943.

This is to certify that upon the representation of Cannery Workers Union, ----- County, No. -----, that a majority of the employees in ----- Plant of ----- located at ----- are members of said union and have designated said union as their representative for collective bargaining, the undersigned hereby adopts that certain agreement made and entered into as of the 10th day of July, 1943 by and between California Processors and Growers, Inc., for and on behalf of certain canning companies and The American Federation of Labor and California State Council of Cannery Unions for and on behalf of certain cannery workers' unions, and promises to be bound thereby.

By -----  
-----  
Authorized Officer

Dated: -----, 1943.



2457  
Nos. 11,694 and 11,693

IN THE

United States Court of Appeals

For the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,  
*Petitioner,*

vs.

SCIENTIFIC NUTRITION CORPORATION,  
d/b/a Capolino Packing Corpora-  
tion,

*Respondent,*

No. 11,694

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN and HELPERS OF AMERICA,  
AFL., and CALIFORNIA STATE COUN-  
CIL OF CANNERY UNIONS, AFL,

*Intervenors.*

NATIONAL LABOR RELATIONS BOARD,  
*Petitioner,*

vs.

G. W. HUME COMPANY and CALIFORNIA  
PROCESSORS & GROWERS, INC.,

*Respondents,*

No. 11,693

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN and HELPERS OF AMERICA,  
AFL., and CALIFORNIA STATE COUN-  
CIL OF CANNERY UNIONS, AFL,

*Intervenors.*

JAN 15 1950

PAUL P. O'BRIEN

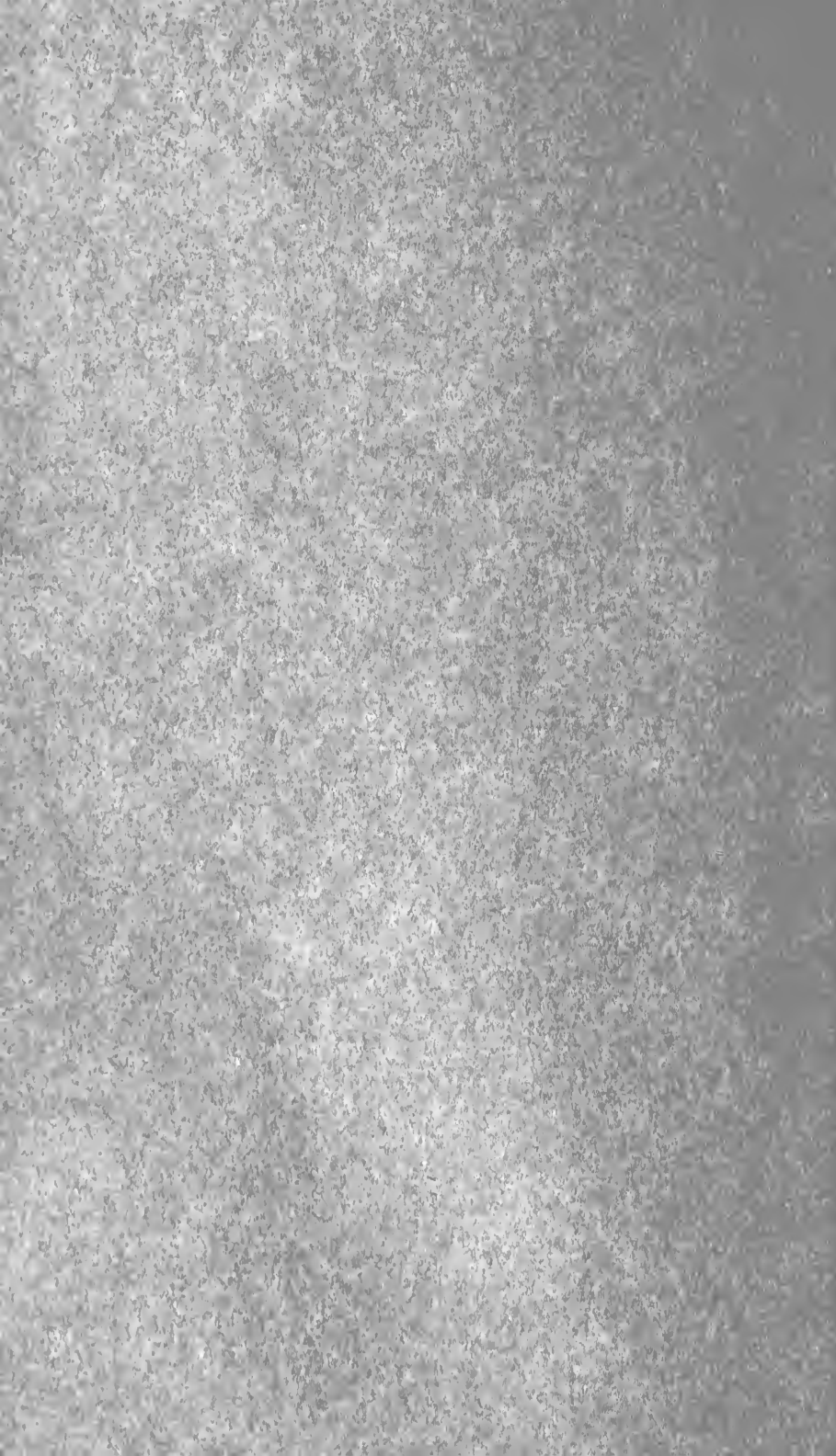
RESPONDENTS' SUPPLEMENTAL BRIEF.

J. PAUL ST. SURE,

EDWARD H. MOORE,

Financial Center Building, Oakland 12, California,

*Attorneys for Respondents.*





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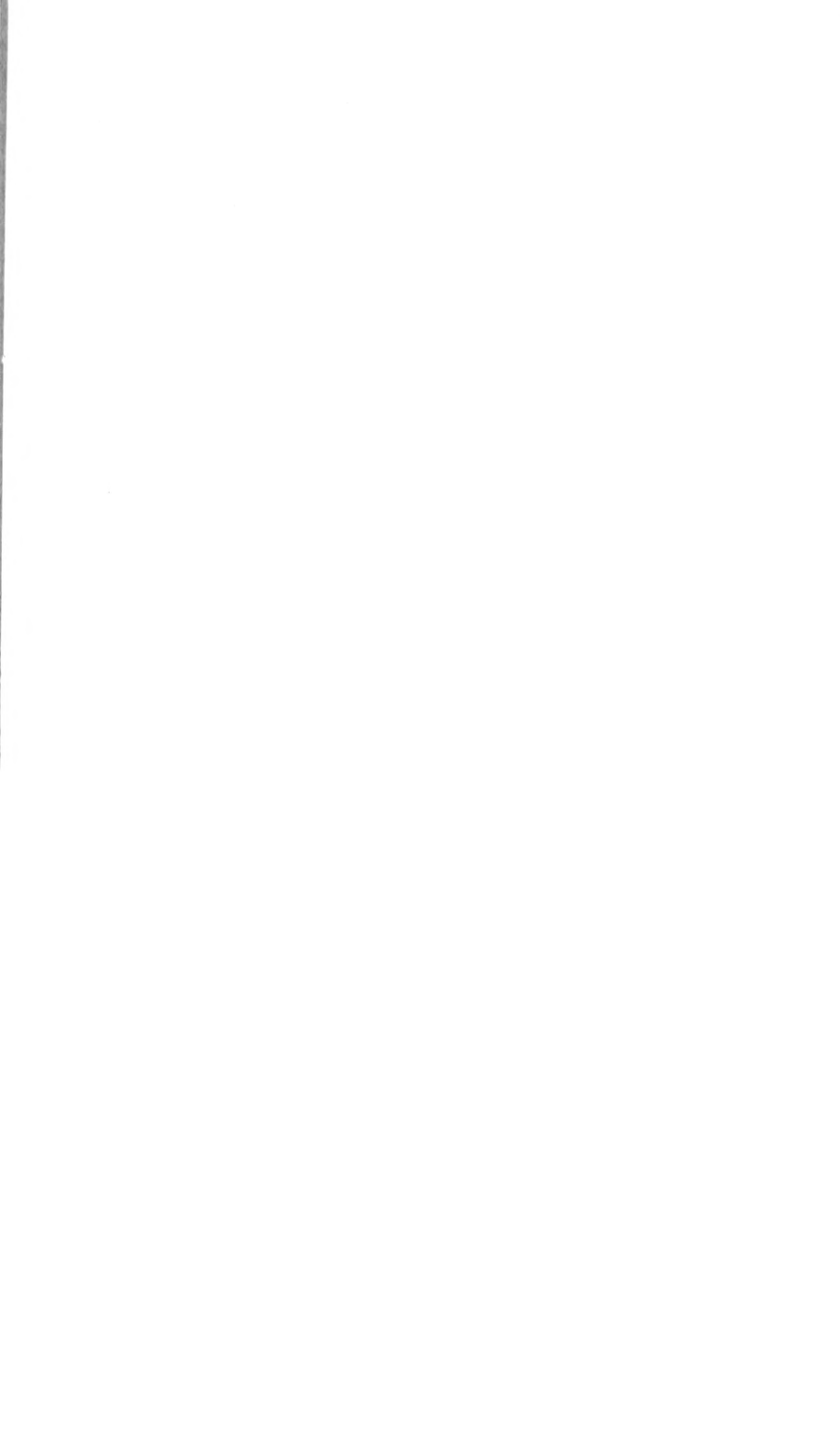
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Nos. 11,694, 11,693

IN THE

**United States Court of Appeals  
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NATIONAL LABOR RELATIONS BOARD,  
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vs.

SCIENTIFIC NUTRITION CORPORATION,  
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*Respondent,*

No. 11,694

INTERNATIONAL BROTHERHOOD OF  
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HOUSEMEN and HELPERS OF AMERICA,  
AFL., and CALIFORNIA STATE COUN-  
CIL OF CANNERY UNIONS, AFL,  
*Intervenors.*

NATIONAL LABOR RELATIONS BOARD,  
*Petitioner,*

vs.

G. W. HUME COMPANY and CALIFORNIA  
PROCESSORS & GROWERS, INC.,  
*Respondents,*

No. 11,693

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN and HELPERS OF AMERICA,  
AFL., and CALIFORNIA STATE COUN-  
CIL OF CANNERY UNIONS, AFL,  
*Intervenors.*

**RESPONDENTS' SUPPLEMENTAL BRIEF.**

In accordance with the order of the Court of December 15, 1949, this brief is filed to discuss the effect of the decision of the Supreme Court in *Colgate-Palmolive-Peet v. Labor Board*, 94 Law. ed. Adv. Op. 127. Inasmuch as another memorandum is being filed on this subject in *NLRB v. Flotill Products, Inc.*, No. 11,449, this brief will apply to the Hume and Scientific Nutrition cases above captioned.

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### THE SCIENTIFIC NUTRITION CASE.

As has been noted in briefs already on file, the Scientific Nutrition case took a strange turn as it made its way through the Board's procedures. The Board's complaint (Tr. 8-9) attacked the discharge of Gus Cedar solely upon the ground that the contract requiring membership in the Teamsters Union as a condition of employment had been secured by unlawful aid and assistance given to the union and was therefore invalid.

As we have pointed out in our earlier brief (Respondent's Brief case 11694, pp. 6-12) the Board concedes that the Teamsters succeeded to the contract which covered respondent's employees in May, 1945, and whatever the Teamsters did in the plant after their successorship they did in compliance with the plain provisions of that contract. As we also pointed out, the parties believed that they had a union shop contract.

By the time the case reached the Board, however, it was disposed of on the theory that the collective bargaining agreement to which the Teamsters succeeded was not a closed shop contract. (Board's Brief case 11694, p. 2.) The Board gratuitously rewrote the agreement of the parties, omitting the membership obligation.

Basically we feel that this case is one of simple contract law. The function of the Board was to determine what the total collective bargaining agreement was when the Teamsters Union succeeded to it, and whether the acts of employer and union thereafter were within the provisions of that contract. The Board did not charge, nor does it now claim, that the Green Book contract was adopted as the result of an unfair labor practice, or that the union membership requirement was established as the result of an unfair labor practice. What the Board does is to ignore the union membership requirement, which stands uncontradicted in the record, and thereby effect an administrative amendment of the collective bargaining agreement.

To the extent that the *Colgate* case obligates the Board to stay within the bounds fixed by the statute which created the Board that case is very much in point here. As the Supreme Court said, for example (94 Law. ed. Adv. Op. 132):

“The Board cannot ignore the plain provisions of a valid contract made in accordance with the letter and spirit of the statute and reform it to conform to the Board's idea of correct policy.”

And again (*idem*, pp. 132-133):

“It is quite reasonable to suppose that Congress thought it conducive to stability of labor relations that parties be required to live up to a valid closed shop contract made voluntarily with the recognized bargaining representative, regardless of internal disruptions growing out of agitation for a change in bargaining representative. In the instant case the employees exercised their right to choose their bargaining representative. The representative bound them to a valid contract. The contract was lived under for four years and was subsisting at the period of time in question. It was made and carried out in good faith by petitioner, who cannot be held guilty of an unfair labor practice by administrative amendment of the statute.”

No more so can respondent be held guilty of an unfair labor practice by an administrative amendment of a contract.

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#### THE HUME CASE.

The Hume case presents two issues, both somewhat different than that in *Scientific Nutrition*. The first issue is a matter of contract interpretation under the Green Book agreement. As we stated in our earlier Hume brief (*Respondent's Brief*, case 11693, p. 3), if dismissals were made in response to an obligation created by that contract they are not an unfair labor practice under section 8(3) of the Act, and the order for reinstatement and back pay would fall.

The Teamsters Union throughout this proceeding has consistently argued that the Green Book contract required union membership as a condition of employment. The Board's contrary conclusion may well have been prompted by its reluctance to recognize closed shop or union shop contracts except under the most compelling circumstances, and its desire to restrict their application as far as possible. The Supreme Court recognized the Congressional approval of the closed shop and its effect on the bargaining relationship, in the *Colgate* case. (94 Law. ed. Adv. Op. 132.)

“One of the oldest techniques in the art of collective bargaining is the closed shop. It protects the integrity of the union and provides stability to labor relations. To achieve stability of labor relations was the primary objective of Congress in enacting the National Labor Relations Act. Congress knew that a closed shop would interfere with freedom of employees to organize in another union and would, if used, lead inevitably to discrimination in tenure of employment. Nevertheless, with full realization that there was a limitation by the proviso of Par. 8 (3) upon the freedom of Par. 7, Congress inserted the proviso of Par. 8(3). It is not necessary for us to justify the policy of Congress. It is enough that we find it in the statute.”

In the Hume case the Trial Examiner and the Board found that “the discharges were brought about through coercion of Hume by AFL.” (Tr. p. 89.) The Board argues that threatened economic hardship may not excuse an employer from the consequences

of an unfair labor practice. (Board's Brief, case 11693, p. 37, note 32.) But, as the Court pointed out in the *Colgate* case, "this is a contest primarily between labor unions for control." (94 Law. ed. Adv. Op. 132.)

"In reality whatever interference or discrimination was present here came not from the employer, but from fellow-employees of the discharges. Shorn of embellishment, the Board's policy makes interference and discrimination by fellow-employees an unfair labor practice of the employer. Yet the legislative history conclusively shows that Congress, by rejecting the proposed Tydings amendment to the Act, refused to word Par. 7 so as to hamper coercion of employees by fellow-employees." (Footnote 16.)

(Footnote 16). "During consideration of the bill on the Senate floor, Senator Tydings proposed to amend it by adding to Par. 7 the words 'free from coercion or intimidation from any source.' In the debate which followed it became clear that the amendment would deal with employee-against-employee relations, while the bill was designed to deal only with employee-employer relations, and the amendment was defeated. See 79 Cong. Rec. 7653-7658, 7675."

The Court's admonition that it is not for the Board to make law may warrant a reexamination of the principle of *NLRB v. Star Publishing Co.*, 97 F. (2d) 465, at least insofar as it applies to the rather unusual circumstances of this case.

In short, if on contract principles the Green Book required the discharge of Hume's non-member em-



ployees the AFL was right in maintaining its position and on the authority of the *Colgate* case the Board cannot adopt a different interpretation of the agreement merely to further its now outlawed policy against the enforcement of valid closed shop agreements.

The second issue relates to the validity of a memorandum executed on March 25, 1946, requiring continuous membership in the AFL as a condition of employment. The Board concluded that the memorandum was invalid, not because of any of the matters relating to the discharges, but solely because a representation proceeding was still unresolved by the Board—in other words, because of the Midwest Piping Doctrine.

Much of our argument about the effect of the *Colgate* case on the Midwest Piping doctrine is covered by our Supplemental Brief filed in the *Flotill* case, and rather than repeat it here we are accompanying this memorandum with a copy of the Flotill argument. Additionally, however, we submit that the union membership requirement is valid even though (as distinguished from Flotill) it may have added a condition not previously established by collective bargaining.

The proviso to section 8(3) of the Act (49 Stat. 449, sec. 8(3)) reads in part as follows:

“Provided, That nothing \* \* \* shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as

an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9(a) in the appropriate collective bargaining unit covered by such agreement when made.”

The Board did not find that the Teamsters Union was unlawfully established, maintained or assisted by any unfair labor practice other than by reason of the application of its Midwest Piping doctrine. Nor did the Board find, that the AFL did not in fact represent an uncoerced majority on March 25, 1946, when the union membership memorandum was executed. Absent such findings we submit that the Board has failed to meet its burden of proof. It is not entitled to a presumption of invalidity merely because of the challenge of an outside union. The employer may have acted at his peril in dealing with the AFL as majority representative, but until the Board demonstrates affirmatively that the asserted majority was fictitious the March memorandum stands as a collective bargaining agreement which was enforceable in terms of the declared policy of Congress.

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### CONCLUSION.

For the reasons above stated we submit that the Colgate decision is the inescapable consequence of authorities such as *Consolidated Edison v. NLRB*, 305 U.S. 197, and others cited in our briefs, holding that the Board is without power to issue orders such

as those here before the Court. We shall be pleased to present further oral argument if the Court desires.

Dated, Oakland, California,  
January 13, 1950.

Respectfully submitted,  
J. PAUL ST. SURE,  
EDWARD H. MOORE,  
*Attorneys for Respondents.*



No. 11,693

IN THE  
United States Court of Appeals  
For the Ninth Circuit

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NATIONAL LABOR RELATIONS BOARD,  
*Petitioner,*

VS.

G. W. HUME COMPANY,  
*Respondent,*  
and

INTERNATIONAL BROTHERHOOD OF TEAM-  
STERS, CHAUFFEURS, WAREHOUSEMEN  
AND HELPERS OF AMERICA, A.F.L.,  
and CALIFORNIA STATE COUNCIL OF  
CANNERY UNIONS, A.F.L.,  
*Intervenor.*

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RESPONDENT'S PETITION FOR A REHEARING.

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*Attorneys for Respondent.*

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CLERK



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No. 11,693

IN THE

**United States Court of Appeals  
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vs.

G. W. HUME COMPANY,  
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and

INTERNATIONAL BROTHERHOOD OF TEAM-  
STERS, CHAUFFEURS, WAREHOUSEMEN  
AND HELPERS OF AMERICA, A.F.L.,  
and CALIFORNIA STATE COUNCIL OF  
CANNERY UNIONS, A.F.L.,  
*Intervenors.*

**RESPONDENT'S PETITION FOR A REHEARING.**

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*To the Honorable William Denman, Presiding Judge,  
and to the Honorable Associate Judges of the  
United States Court of Appeals for the Ninth  
Circuit:*

G. W. Hume Company, respondent above-named,  
respectfully petitions this Court for a rehearing and  
for grounds therefor states as follows:

On February 24, 1950 this Court entered its order herein modifying the order of the National Labor Relations Board of October 31, 1946 and enforcing the order as modified. In its opinion the Court found, *inter alia*, as follows:

“Subdivision (b) of the order, *supra*, requiring Hume to cease giving effect to the closed-shop contract of March 25, 1946, or to any extension or renewal thereof, presents a more difficult problem. The inauguration of that contract while the representation proceeding was pending did not stand alone. It was part of a general course of conduct on Hume's part tending to lend aid and assistance to the A.F.L. Aside from the numerous discharges of employees at the instigation of that union, the Board found that after March 1, 1946 Hume permitted A.F.L. representatives free access to the cannery for the purposes of collecting dues and soliciting memberships while at the same time denying like privileges to representatives of the C.I.O. Hume does not dispute the finding. In light of this pattern of discriminatory conduct we are unable to say that the Board's order relative to the closed-shop addenda to the existing contract should not at this juncture be enforced.”

All of the acts referred to by the Court in the above quotation were (as appears from the record herein), done under and pursuant to the terms of the existing contract and if that contract be considered to be valid after March 1, 1946, such acts were lawful. The Court, however, did not determine whether the continuance of the contract after March 1, 1946 was lawful.

It is correct to state that Hume does not dispute the facts referred to above. However, Hume does claim for all of the reasons stated in its Brief and Supplemental Brief herein that the renewal of that contract and all acts performed thereunder were lawful and valid, including the granting of access to the plant by A.F.L. representatives and the soliciting of membership. Such incidental assistance is a customary part of the normal collective bargaining relationship.

In addition, since the entry of the order by the Board on October 31, 1946 there have been changes in the collective bargaining agreement between the parties as a result of joint action of the National Labor Relations Board, the A.F.L. and respondent, represented by California Processors and Growers, Inc. This situation was referred to in our Supplemental Brief on file herein in the *Flotill* case No. 11,449, on page 8 where we stated:

“However, in the event that respondent’s contentions herein should not be sustained and an order should be entered, respondent may desire (dependent upon the provisions of any order that may be entered) to urge that the entry of the stipulated order and decree in *N.L.R.B. v. California Processors and Growers, Inc., et al.*, No. 12,344, raises serious problems concerning the obligations of respondent under any order that might be entered in this case.”

These intervening circumstances are now relevant.

On November 4, 1949, this Court entered a consent decree in the matter of *National Labor Relations*

*Board v. California Processors and Growers, Inc., et al.*, No. 12,344. The respondent herein is named and referred to in that order as a member of the C.P.& G. and is a respondent in that proceeding. Although the Complaint in that proceeding attacked the validity of the contract between the A.F.L. and the C.P.& G., the stipulated order and decree makes no reference to the contract and no order was made with regard to the contract. It was the intention of the parties in so drafting the settlement stipulation and omitting to mention the contract to eliminate any claim that the contract between the A.F.L. and the C.P.& G. and its members was for any reason invalid.<sup>1</sup>

After the Settlement Stipulation the A.F.L. filed a petition with the National Labor Relations Board under Section 9(e) of the Labor Management Relations Act of 1947 for the purpose of securing authority to negotiate a union shop contract with C.P.& G. An election was conducted by the National Labor Relations Board pursuant to that petition and the ballots were tallied on September 13, 1949. The

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<sup>1</sup>The last paragraph of page 6 of the Settlement Stipulation provides as follows:

“It is the purpose of this agreement to adjust finally and completely, all unfair labor practices with which the respective respondents are charged and which serve as the basis of the complaint herein and it is the understanding of all parties that any further action taken by the General Counsel or the Board upon the basis of said charges and complaint shall be limited by, and taken pursuant to, the terms of this Stipulation. It is further understood that any allegations made in the charges and the complaint herein, not expressly mentioned in this Stipulation or the Order herein, shall be deemed settled or adjusted and shall not serve as the basis for any new or further proceedings before the Board or any Court.”

tally showed a vote of 33,237 "Yes" as against 1,578 "No" in favor of authorizing the A.F.L. to enter into an agreement with C.P.& G. (representing its members, including respondent), to require membership in the A.F.L. as a condition of continued employment.

Employees of Hume participated in the election and their ballots were counted, together with those of employees of other members of C.P.& G. voting in the election. On October 17, 1949 the Regional Director for the 20th Region issued his Certificate in said proceeding certifying that the required majority of the employees eligible to vote had voted to authorize the A.F.L. to make an agreement with C.P.& G., Inc. (as representative of its members, including respondent Hume) requiring membership in the A.F.L. as a condition of employment in conformity with the provisions of Section 8(a)(3) of the National Labor Relations Act as amended. Thereafter, the A.F.L. and California Processors and Growers, Inc. acting on behalf of its members, including respondent Hume, entered into a contract pursuant to the authority granted by the certification above referred to which contract is now in existence.

The order of the Board entered in this proceeding on October 31, 1946, and enforced as modified by this Court insofar as it refers to the contract between the A.F.L. and Hume attempts to invalidate not only any then existing contract but any "extension, renewal, modification or supplement thereof or to any

superseding contract." (Record 38.) The contract referred to by the Board in its order has been superseded by a contract unquestionably valid, entered into pursuant to the authorization issued by the N.L.R.B. on October 17, 1949.

It is, therefore, respectfully urged that the order of this Court insofar as it would tend to invalidate any existing contract between respondent Hume and the A.F.L. be modified.<sup>2</sup>

If the decree to be entered herein does refer to the previously existing contract it should plainly indicate that the contract now existing is valid. However, as there is no longer any question as to the validity of the present contract preferably any decree entered herein should not contain language referring to the superseded contract as this might throw doubt on the existing completely valid contract.

Respondent further urges that for all the reasons heretofore argued at length in its Brief and Supplemental Brief on file herein, and on a parity of reasoning with the decision of this Court in *National Labor Relations Board v. Scientific Nutrition, etc.*, No. 11,694, the order entered herein, insofar as it would require reinstatement with back pay, should not be enforced. It is respectfully suggested that the order of the Board should be set aside in its entirety.

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<sup>2</sup>On March 8, 1950 respondent's counsel wired the NLRB in Washington, D.C., pointing out the conflict summarized above and suggesting a joint application to this Court for modification of its order. To date no reply has been received to this wire.

Wherefore, respondent prays that its petition for a rehearing herein be granted and that on said rehearing, the order entered herein be modified as prayed.

Dated, Oakland, California,  
March 15, 1950.

J. PAUL ST. SURE,  
EDWARD H. MOORE,  
*Attorneys for Respondent.*





**CERTIFICATE OF COUNSEL.**

I hereby certify that I am of counsel for respondent and petitioner in the above entitled cause and that in my judgment the foregoing petition for a rehearing is well founded in point of law as well as in fact and that said petition for a rehearing is not interposed for delay.

Dated, Oakland, California,  
March 15, 1950.

J. PAUL ST. SURE,  
*Of Counsel for Respondent.*









